

MASTERS RESEARCH REPORT

THE RETURN OF THE MILITARY COUP TO WEST AFRICA: THE AFRICAN UNION RESPONSE

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Abstract:

The following research report seeks to investigate the recent occurrence of military coup d'états in the geographical sub-region of West Africa. Military coups staged in both Mauritania (August 2008) and Guinea (December 2008) represent an alarming spike in the incidence of illegal political takeovers and raise questions as to what form of response is required in order to limit, or completely eradicate, the scourge of unconstitutional changes of government (UCG) from the continent. This report suggests that the African Union (AU), in its commitment to the ideals of political legality and legitimate governance, is capable of addressing UCG in Africa through its inherent ability to induce long-term normative reformations regarding democracy and constitutionality.

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CHAPTER 1

AFRICA – A HISTORY OF MILITARY COUPS

“The African military has not retired to the barracks, and it is only a matter of time before it returns, unless something drastic is done to prevent a return.”¹

¹Onwumechili, C. 'African Democratization and Military Coups' Greenwood Publishing Group, 1998, pg 37

Map of Africa



Map of West Africa



The pervasiveness with which military coups have plagued African politics in its postcolonial history has led many observers to conclude that the military coup d'état in Africa has become an 'institutionalized mechanism for succession.'² Indeed, since the majority of African states gained independence, the frequency and distribution of military coups has been both high and widespread. The end of colonial rule on the continent brought with it an immediate sense of optimism and a genuine belief in the ability of Africa's new leaders to guide the continent into a novel era of pluralist democracy. However, the history books reveal that civilian rule in Africa has largely been sidelined by ongoing military usurpations and subsequent military rule. When one considers that between 1960 and 1982, almost 90 percent of the 45 independent African states experienced a military coup, an attempted coup, or a plot³ – it throws into sharp relief the fact that the military coup has gone hand in hand with Africa's political development, or lack thereof.

Generally characterized by a sudden and often violent overthrow of an existing government⁴, coups entail a shift in political power that circumvents democratic and constitutional mechanisms of political succession. By 1990, more than 60 successful coups had taken place on the continent⁵, leaving in their wake vast amounts of analysis and proposed hypotheses aiming to uncover the causes behind military coups.

Astonishingly, by the late 1990's, Mauritius was the only African state where political power had changed hands as a result of a government's defeat in a freely contested election⁶, a clear reflection of Africa's historically restrained democratic development. The political and socio-economic impact that the majority of military coups have induced, coupled with their overarching anti-developmental consequences, has precipitated both qualitative and quantitative analysis surrounding their frequency, trends and geographical distribution. Despite extensive analysis, Samuel Decalo accurately sums up the difficulty in attempting to put a finger on the causes of military coups:

² Craig Jenkins, J. and Kposowa, A. 'Explaining Military Coups D'état: Black Africa, 1957-1984' American Sociological Review, Vol. 55. No. 6 (Dec. 1990) pg 861

³ Loc. Cit

⁴ McGowan, P. 'African Military coups d'état, 1956-2001: Frequency, Trends and Distribution' The Journal of Modern African Studies, Vol. 41, No.3 (Sep. 2003) pg 341

⁵ Onwumechili, C. op cit. pg 37

⁶ Luckham, R. 'The Military, Militarization and Democratization in Africa: A Survey of Literature and Issues' African Studies Review, Vol. 37, No. 2 (Sep. 1994) pg 27

‘Coups motivations are often murky and convoluted and manifest the intertwining of structural roots of instability with the most parochial considerations. They pose thorny problems of assessing human motives, separating between particularistic and systemic destabilizing conditions and between primary and secondary variables.’⁷

The man on horseback theory

Whilst the propensity for military coups in Africa can be attributed to a number of variables, the resultant impact that unconstitutional political takeovers have had on Africa’s positive political development and good governance is injurious. Military takeovers in Africa have often been justified by the perpetrators as a necessary political intervention, a means of stabilising and rectifying the wrongs of civilian governments. Despite the fact that many military coup perpetrators promote the idea that the regimented characteristics and strong leadership qualities displayed by the military are necessary traits of good political governance, it would seem that the vast majority of military governments in Africa are not suited to the task of political governance. ‘Those who greeted the advent of soldiers into politics as a new modernizing force, disciplined and capable of promoting progress, were to be terribly disappointed.’⁸ In the case of Africa, one could fairly suggest that the term ‘a military in government’ is a more accurate description than the term ‘military government’.

Thus, despite the promise of sweeping changes and overall betterment, one of the most tangible changes in post-coup African states would seem to be a redistribution of political and economic power from civilian elites to military elites. It is no coincidence then, that the majority of successful military coups have been directly followed by immediate increases in military budgets and military personal fringe benefits.⁹ In already economically hard-pressed

⁷ Decalo, S. *‘Coups and Army Rule in Africa: Motivations and Constraints’* Second Edition, Yale University Press, 1990, pg 15

Whilst there remains no definitive classification of variables, secondary variables tend to be grouped according to broader contributing factors to coup propensity, these may include: Africa’s history of economic stagnation, a lack of post-colonisation political development, Africa’s tribal make-up and its incompatibility with governance within a Western-centric political system as well as the strong role that African militaries have played in the continents political history. Primary variables often look to specific aspects within an individual state, these may include: the nature of political rule as imposed by the incumbent government, social prejudices and the social make-up within a state and the characteristics of the military itself (military size and state resource allocation, how prominent a role the military plays in upholding government power, whether there exists a centralisation of power in the hands of a few key military figures etc.)

⁸ Cervenka, Z ‘The Effects of Militarization of Africa on Human Rights’ *Africa Today*, Vol. 34, No.1/2 (1987) pg 71

⁹ Decalo, S. op cit. pg 18

African countries, these budgetary commitments to the military are usually enough to stifle any potential for future economic growth.

One of the most concerning dimensions of military coups, is the fact that they are generally perpetrated by a small group of military personnel, whether it be a collection of junior officers or a handful of disgruntled generals. In this way, a military coup differs from a revolution, in which a significantly larger proportion of society seeks to implement changes in government. For this reason, successful military coups and resultant military rule places a broad spectrum of state apparatus and decision-making powers in the hands of a few, a situation which has historically limited the political mobility of the majority. Despite coup perpetrators often attempting to justify their actions as necessary in order to bring some form of stability to the state, military coups are most often orchestrated in order to benefit the coup perpetrators themselves. Even the supposed ‘guardian coup’¹⁰ therefore satisfies the interests of a small military elite rather than the interests of the population at large. In essence, an ongoing process of replacing one class of elites with another lies at the heart of what has prevented the majority of Africans from experiencing genuine political freedom and having a substantive voice concerning their futures. Even when it is not in direct political control of a state, the military in many African countries has come to be regarded as simply another faction of the ruling elite, so much so that it has often been seen as the ‘armed wing of the bureaucratic bourgeoisie’¹¹. This places the majority of African populations in a dangerous and perpetual cycle of ineffective and rapacious government rule be it military or civilian.

Beyond this, history suggests that military coups carry an inherent propensity for triggering internal power struggles, personal power gambits, fractured leadership and subsequent attempted or successful counter coups.¹² Once the military violates the professional ethic of political detachment and non-intervention, a precedent is established that impacts on the way future generations of military officers perceive their role within the state, seeing intervention as a viable means of securing their own interests rather than forming part of state apparatus

¹⁰ This is a term that is often used in describing a military coup that is executed under the pretence that the incumbent government is no longer sufficiently protecting the interests of the state and its population. The incumbent regime must therefore be usurped by a competent successor (in this case the military) in order to prevent any further incompetent governance.

¹¹ Thomson, A. ‘*An Introduction to African Politics*’ Routledge, New York, 2000, pg 128

¹² Decalo, S. op cit. pg 24 Countries such as Benin (1963, 1965, 1965, 1967, 1969), Burkina Faso (1980, 1982, 1983, 1987), Ghana (1972, 1978, 1979, 1981) and Uganda (1971, 1979, 1980, 1985) serve as examples of states where military coups have precipitated a number of successive counter coups.

under civilian rule. The contagion theory surrounding military coups goes further by suggesting that a military coup in one country greatly increases the chances of a military coup occurring in another country, particularly neighbouring states. A successful military coup in one state can often motivate other potential coup perpetrators to take action in the hope of similarly capturing power.¹³ Military coups in Africa would seem to sow the seeds of further political instability, a challenge to Africa's hopes of fostering greater levels of political institutionalisation and the use of constitutional channels in bringing about political change.

Shooting down institutionalisation

'The army moves into the presidential palace with no blueprints for social policy, little expertise in developmental administration, and certainly no control over levels of foreign investment and technical assistance'.¹⁴ This does little in terms of creating viable political institutions through which genuine development can take place, the military inherently showing little interest in promoting political institutionalisation. Political institutionalisation can be defined as a process through which stable, complex political structures and procedures are developed and concurrently legitimised to create a degree of subsystem autonomy.¹⁵ If the military is not willing to embrace some form of institutionalisation and the civilian government has been deposed, their logically remains little hope for positive political advance. However and perhaps most alarmingly, transparency and accountability have not been synonymous with governance in Africa, regardless of whether a civilian or military government is in power.

Empirical and statistical analysis largely suggests that there exists no significant difference between military and civilian governments, when assessed in terms of substantive achievements in office and effective governance. Both civilian and military government display pyramidal power structures that ultimately articulate and secures the interests of very few, leaving the wider citizenry left wanting. Compounding this hierarchical nature of governance is the fact that African people are largely alienated from state institutions and processes, providing them no means of effecting any substantial change in the elite-serving

¹³ Souare, I. 'Explaining the December 2008 Military Coup D'état in Guinea' at kms1.isn.ethz.ch/serviceengine/Files/ISN/101182/.../Chapter+4.pdf (accessed 15 July 2009)

¹⁴ Decalo, S. op cit. pg 27

¹⁵ Ibid. pg 30

nature of African politics.¹⁶ Indeed, over a period of time, the differences between the long-term impact of the civilian and military modalities of governance are negligible.¹⁷

Yet despite the fact that no significant difference appears to exist between civilian and military governments, based on achievements in office, the means through which a military regime is brought into power should also attract concern. In this sense, it is not simply the end result which poses a challenge to Africa's positive political development, but also the means through which this end is achieved.

Breaking the highest law

'[T]he constitution defines modalities by which power can be acquired and exercised, and any deviation from these norms is unconstitutional.'¹⁸ Indeed, military coups constitute a violation of a state's highest law – the constitution. Whilst Africa's history of military coups would suggest that notions of constitutionalism have hardly prevented coup conspirators from attempting unconstitutional takeovers, a healthy respect for the law of the state is a fundamental aspect of building strong democracies and promoting good governance. Indeed, constitutions serve as legally-binding means of securing both the ideals and implementation of democracy. The model of democracy that Africa strives to attain has largely been defined as liberal parliamentary democracy, a model that endorses freely contested elections, constitutionally guaranteed rules of law and multipartyism.¹⁹ In protecting these democratic principles, constitutions effectively limit the power of the state by encasing the actions of the government within a predetermined framework. This goes hand in hand with protecting the liberties of the population, ensuring that the government does not abuse the power that has been vested within it.

'Constitutions and constitutionality therefore embody the practices, customs, and rules through which power is established, exercised, and transmitted in the state, ensuring the primacy of the law over both the governed and the governors – in other words, no one is above the law.'²⁰ Adherence to a states' constitution by a ruling group precipitates

¹⁶ Ikome, F.N 'Good Coups and Bad Coups: The Limits of the African Union's Injunction on Unconstitutional Changes in Power in Africa' Institute for Global Dialogue, Midrand, 2007, pg 19

¹⁷ Ibid. pg 16

¹⁸ Ibid. pg 11

¹⁹ Luckham, R. op cit. pg 63

²⁰ Ikome, F.N op cit. pg 10

legitimacy. Whilst the idea of legitimacy is often a difficult concept to fully comprehend, what is clear is that ruling groups that act outside of the predefined laws of the state cannot be seen to be acting in the best interests of the wider population. In line with this logic, if a military coup is seen as an unconstitutional action, any form of government that comes about as a result of the coup would logically lack legitimacy. Africa's need for legitimate and strong governance requires an overall endorsement and respect for constitutionalism, failing to do so, creates an atmosphere in which political disorder thrives and no mechanism for accountability exists. In this sense, every military coup that takes place in Africa can be seen as yet another assault on Africa's potential for creating a continental political atmosphere in which pluralist democracy is the norm and unconstitutional takeovers are deemed intolerable.

The constitutionality of constitutions

However, constitutionalism presents its own challenges not only with regard to promoting its existence and enforcing its implementation, but due to the fact that constitutions themselves are often subject to the influence of undemocratic and biased political forces. As a political and legal entity, constitutions are not fashioned by a higher power, but rather are articulated and enforced by those already maintaining political influence. If the process through which constitutions are engineered does not reflect the best interests and desires of the broader citizenry, then it serves to reason that the constitution itself serves little purpose in protecting the rights of those excluded from the creation process. The alienation of the citizenry from state processes effectively limits the voice of the majority from influencing the engineering, reconstruction or amending of their own constitutions. By limiting the amount of stakeholders involved in the process of constitution construction leaves the door wide open for those already in power to serve their own interests via the creation of a 'legitimate' constitution. As a result of this, 'the current constitutions of many African countries were either arrived at as direct impositions, or came about as a result of elite-driven processes and agendas that tended to treat the interests and concerns of the greater majority of the people with disrespect and even contempt.'²¹

Without suggesting that all African constitutions should be deemed irrelevant, the alienating and illegitimate processes through which many African constitutions have come about brings

²¹ Ikome, F. N op cit. pg 20

into question the validity of constitutionalism as a platform upon which good democratic governance can be built. It goes without saying that if a constitution is precipitated out of undemocratic and non-pluralistic processes; there can be little hope for the constitution itself serving as a vanguard to the ideals of democracy. If African constitutions run the very real risk of being manipulated by ruling elites and perpetuating already existing inequalities and undemocratic institutions, why then, should we be concerned about the impact that constitutional takeovers can have on the principles of constitutionalism?

An aspect to this question revolves around ensuring that the process through which constitutions are constructed or amended must begin to be an inclusive process. Whilst this maintains its own difficulties and challenges, the key concern should be Africa's ability to uphold the central tenants of constitutionalism as a guiding mechanism that encompasses notions of democratic governance and political legitimacy. It is not that constitutions by themselves automatically dictate successful and peaceful regime change, but rather that by their inherent composition they contribute to making such changes a real possibility and then a probable reality.²² The protection and strengthening of constitutionalism needs to be upheld whether the challenge stems from an outright illegal political usurpation or from the overriding of constitutionality at the hands of an incumbent government. Both types of constitutional challenges are damaging to the broader advancement of Africa's political future, with the former presenting a challenge to the way in which constitutionally-prescribed political successions take place and the latter undermining the responsibility of government to uphold constitutionality as a guiding principle of governance. Africa, through continental organisations such as the African Union, needs to establish a platform upon which to tackle its countless political shortcomings and build its political future. It is only with an endorsement of constitutionalism as a principle that these goals can be achieved.

The plight of West Africa

Whilst military coups and the unashamed disregard for constitutional ideals have impacted on nearly every independent African state, West Africa is recognised as the most coup-prone region on the continent. It is alarming to note that for a geographical sub region that comprises only one third of the continent's states, more than half of all successful coups since

²² Tesfagiorgis, P and Wahui, W. 'Constitution Building vs. Coup-making' Open Democracy, April 2009 at <http://www.opendemocracy.net/article/idea/africa-constitution-building-vs-coup-making> (accessed 7 October 2009)

independence have taken place in West Africa.²³ Whilst the difficulty in placing one's finger on the causes of military coups has already been noted, West Africa's history of droughts, rapidly increasing populations and economic fragility has been compounded by entrenched militarism.²⁴ These structural factors have all played their part in making West Africa a hotbed for military takeovers and largely incompetent political rule. The military's recognised disregard for institution building has been widely documented in the region, the figure of the military lingering threateningly in the background of West Africa's political fragility.

Since the first successful military coup d'état in Togo in 1963, West Africa has accounted for the majority of successful coups in sub-Saharan African since 1956.²⁵ West African states such as Nigeria, Benin, Burkina Faso, and Sierra Leone have seemed to exist in an endless cycle of military takeover and military rule since independence. The fact that the military has twice usurped democratically elected governments in Nigeria, Ghana, and Sierra Leone is a greater reflection of West Africa's military establishment's infamous contempt for democratic rule.²⁶ Illegal usurpations have become entrenched in the political character of West Africa, more so than in any other sub-region of the continent. 'Military coups in West Africa have reinforced the primacy of violent domination over popular legitimation.'²⁷

Table 1.1

West African Military Coups since Independence (end 1999)²⁸

State	Independence	1950s/1960s	1970s	1980s	1990s	Total
Benin	1960	1963, 1965, 1965, 1967, 1969	1972			6
Burkina	1960	1966	1974	1980, 1982,		6

²³ Adebajo, A and Rashid, I. (eds.) 'West Africa's Security Challenges: Building Peace in a Troubled Region', Lynne Rienner Publishers, Inc. Colorado, 2004 pg pg 1

²⁴ McGowan, P. and Johnson, T. 'Sixty Coups in Thirty Years – Further Evidence Regarding Military Coups d'état' in The Journal of Modern African Studies, Vol. 24, No. 3 (sep. 1986) pg 541

²⁵ Adebajo, A and Rashid, I. (eds.) op cit. pg 147

²⁶ Ibid. pg 148

²⁷ Ibid. pg 149

²⁸ Thomson, A. op cit. pg 124

Faso				1983, 1987		
Cape Verde	1975					0
Cote D'Ivoire	1960				1999	1
Gambia	1965				1994	1
Ghana	1957	1966	1972, 1978, 1979	1981		5
Guinea	1958			1984		1
Guinea- Bissau	1974			1980	1999	2
Liberia	1947			1980		1
Mali	1960	1968			1991	2
Mauritania	1960		1978	1980, 1984		3
Niger	1960		1974		1996	2
Nigeria	1960	1966, 1966	1974	1983, 1985	1993	6
Senegal	1960					0
Sierra Leone	1961	1967, 1968			1993, 1996, 1997	5
Togo	1960	1963, 1967, 1967				3
Total		15	7	12	9	44

As one would expect, West Africa's history of repressive regimes, autocrats, military regimes and incessant military coups has left the region in a political malaise. In order to promote ideals of constitutionality and political legitimacy, West Africa will have to break free from its perpetual cycle of political fragility. Having said this, the notion that political order as well as both good *and* democratic governance requires legitimization of political institutions holds

true in West Africa, as it does across the continent. If military regimes are unresponsive to the needs of the majority and fail to promote some form of positive institutionalisation, then their presence on Africa's political landscape should no longer be deemed acceptable.

Fighting on two fronts

However, as has been previously noted, both civilian and military governments have tainted Africa's history of positive political development. Even those civilian governments that have been democratically elected have failed to break the continent's long-standing tradition of predatory-style governments that display both an indifference to the needs of their people and an active draining of already limited state resources. It is for this reason that the focus of this investigation has been levelled at the *process* through which governments have come into power, military coups representing the most deliberate and blatant attack on the ideals of constitutionalism and political legitimacy. Africa faces a twofold challenge from the perspective that it must continue to ensure that incumbent governments do not violate the constitutional principles which they have been elected to protect, as well as ensure that democratic political transitions become the continental norm.

Africa and West Africa in particular, cannot begin to hope for better governance and effective rule unless measures are taken to equally prevent undemocratic rule and unconstitutional usurpations of power. It is only once an inalienable respect for constitutional law, democratic governance and legitimate transfers of political power has been entrenched, can Africa begin to viably promote better governance and development. Africa's track record of autocratic and unconstitutionally elected governments paints the picture of a continent that has previously been engrossed by a total disregard for the principles and processes of constitutionality and democracy. Breaking this cycle of misrule and illegal power grabs requires a sincere commitment on the part of the continents' regional and continental organisations to create positive precedents that will begin to reinforce the ideals of constitutionality and democracy.

Africa requires a norm-creating avenue through it can begin to instil an acceptance of the notion that only democratically guided and democratically elected governments will be tolerated. Any deviation from this norm should be deemed a gross violation of the continent's aspirations to create a political future that facilitates economic growth, social development and positive institutionalisation. If military coups and other unconstitutional actions continue to periodically undercut the foundations upon which to build Africa's constructive political

future, then breaking free of the continents shackled past will be an insurmountable task. However, contemporary trends in African politics would seem to point to an encouraging shift in levels of democracy and the protection of constitutional ideals.

The big picture

Principles of accountability and constitutional means of governance have gradually gained momentum in recent decades, with an encouraging number of West African states embracing democratic ideals and laying a solid foundation upon which to build further democratic institutions. This is despite a brutal return to military rule in Nigeria in 1993 and the overthrowing of democratically-elected leaders in Gambia and Niger in 1994 and 1996 respectively.²⁹ Niger was to suffer another coup in 1999, subsequent to a similar military takeover in Sierra Leone in 1997. These examples of illegal transitions of power, point to the still delicate political landscape that exists in West Africa, with the majority of states still finding it challenging to cement some form of political stability and implement genuine pluralistic democracy. However, one could fairly suggest that the last 15 years of West African politics have displayed encouraging signs of constructive and institutional-based political development, lending to the creation of a political atmosphere in which the military coup is no longer found to be commonplace.

Principles of good governance and plural democracy have gradually permeated through both regional, continental, and global actors, placing a more acute spotlight on those countries where transgressions of these principles are taking place. Despite its historical impediments to positive political growth, West Africa has made strides in promoting both regional security and democratisation, the advent of the Economic Community of West African States (ECOWAS) being welcomed as a positive step in building regional ties and a collective interest in peace.

The beginnings of West Africa's democratic revival can largely be attributed to Benin, one of West Africa's most prolific coup victims. In 1990, the country's longstanding military rule was brought to an end and adopted a legitimately-constructed constitution, very similar to the

²⁹ Le Vine, V. 'The Fall and Rise of Constitutionalism in West Africa', The Journal of Modern African Studies, Vol. 35, no. 2 (Jun. 1997) pg 197

one articulated by Benin's post-independence leaders 30 years previously.³⁰ In their recent political history, West African states such as, Ghana, Nigeria, Mali, Senegal and have all welcomed more open political systems, whilst the likes of Niger, Benin, and Sierra Leone have seen the backs of autocratic military regimes during the 1990's.³¹ These political trends point to a growing acceptance of democracy and constitutionality in West Africa and a concurrent rejection of autocratic and illegitimate governments. There are indications that the sub-region of West Africa is gradually beginning to turn its back on its infamous political history that rendered it the most coup-prone and unstable region in Africa. '[F]rom the perspective of power alternation and peaceful turnover of leaders, West Africa seems to be on the right path.'³²

Thus, the recent political events in Mauritania and Guinea should be seen as an alarming diversion on Africa's road to immutable constitutional rule and political legitimacy. In the midst of West Africa's ongoing process to create and sustain positive political institutionalisation, these events come as a worrying challenge to the regions movement towards better governance and political stability. Beyond this, it highlights the need for a Pan-African response to this evidently ongoing destabilization of governance in Africa. Military-led coups in Mauritania (August 2008) and Guinea (December 2009) have raised fears of a resurgence of military coups in the region and have both been met with strong opposition by the AU.

The cases of Mauritania and Guinea

In the case of Mauritania, coming on the back of a successful military coup in 2005, the Head of the Presidential Guard, General Mohamed Ould Abdel Aziz, seized power from the country's first democratically elected leader, Sidi Mohamed Ould Cheikh Abdallahi.³³ As one of the world's poorest countries, Mauritania's population of 13 million people have had to make due with a historically stagnant economy and relatively limited natural resources.³⁴

³⁰ Ibid. pg 187

³¹ Adebajo, A and Rashid, I. (eds.) op cit. pg 2

³² ISS Situation Report: '2008-2009 Retrospective Look at the Last Year and Forecast for the New Year', African Security, Analysis Programme, (author unknown) 11 February 2009

³³ United Nations Security Council Report: Update Report. 'The Resurgence of Coups D'états in Africa'. 15 April 2009. No. 3 pg 1

³⁴ Zisenwine, D. 'Mauritania's Military Coup: Domestic Implications and Regional Challenges' in Maddy-Weitzman, B (ed.) Telaviv Notes: An Update on Middle Eastern Developments by the Moshe Dayan Centre, August 19, 2008 at <http://www.dayan.org/DZ%20-Mauritania.pdf> (accessed 10 September 2009)

Complicating these economic ills, Mauritania's socio-political landscape has been characterised by an Arab elite dominating a largely Black African underclass.³⁵ Situated in between Arab North Africa and Black Sub-Saharan Africa, Mauritania has failed to establish a stable unifying identity, making political rule a challenging undertaking.

The 2007 elections that brought Abdallahi to power were deemed to be free and fair, and heralded what seemed to be a new era in Mauritania's political development. Not only was Abdallahi the first democratically-elected leader of the state but he was also the first not to rely on the military as an insurer of his political power. Yet it appears as if this disengagement from the military served only to strain civil-military relations and can be seen as the catalyst behind the coup on August 6th 2008. Reports suggest that support for Abdallahi had started to falter within parliament, as those Members of Parliament loyal to figures within the Mauritanian military establishment did not approve of new proposed military appointments by the President.³⁶ These new appointments would mean the axing of four top military commanders, including the Head of the Presidential Guard, General Mohamed Ould Abdel Aziz. Two weeks prior to the staging of the coup, the Mauritanian Parliament passed a motion of no confidence in the elected cabinet³⁷, leading some observers to suggest that a 'political coup' was staged prior to the military taking action.

With the military seizing control, coup leaders declared that a new 'Mauritanian State Council'³⁸ would be established in order to formalize their powers and, expecting international criticism, announced that elections would be held in order to vote in a new, democratically elected leader. Not only is the State Council made up entirely of senior military officials, 7 of the 11 members played an active role in the Mauritanian military takeover in 2005.³⁹ The political events in Mauritania serve as a stark reminder of the delicate political situations that still persist throughout most of West Africa and how easily instances of unconstitutional political takeovers can swiftly undermine the positive political progression of an individual state as well as the sub-region as a whole. Whilst democratic

³⁵ Loc. Cit

³⁶ "Military Coup in Mauritania", (author unknown) at <http://www.afrol.com/articles/30157> (accessed 1 September 2009)

³⁷ "Troops Stage Coup in Mauritania" (author unknown) at <http://news.bbc.co.uk/2/hi/7544834.stm> (accessed 2 September 2009)

³⁸ Zisenwine, D. op cit.

³⁹ Boucek, C. 'Mauritania's Coup: Domestic Complexities and International Dilemma's' in Carnegie Endowment for International Peace, Middle East Program, Web Commentary, August 2008 pg 1 at http://www.carnegieendowment.org/files/boucek_mauritania.pdf (accessed 4 July 2009)

institutions and constitutionally-informed means of governance are starting to find firmer ground in which to fix themselves, the underlying structural causes of military coups still endure and much still needs to be done to fully protect the viability of constitutional, popular rule.

Within months of the Mauritanian coup, the West African state of Guinea saw its military take over the reins of power in a bloodless coup, subsequent to the death of long-standing President, Lansana Conte. The coup leader, Captain Moussa Dadis Camara, immediately suspended the Guinean constitution and forced the Prime Minister and the Speaker of the National Assembly to stand down.⁴⁰ According to constitutional procedure, in the event of the President dying, the Speaker of the National Assembly would stand in as interim President for 60 days until an election would be held.⁴¹ It goes without saying that this unconstitutional intervention by a junior ranking army official serves as a stark example of how inadequate levels of institutionalisation remain in West Africa. Guinea has been ranked 160 out of 177 on the United Nations development scale, and although possessing fairly extensive natural resources, particularly bauxite, the extent of corruption and financial mismanagement in the country has meant that the general standard of living has remained unacceptably low.⁴²

The aftermath of both coups saw formal presidential elections being promised in Mauritania and Guinea. In Mauritania, elections eventually took place in July of 2009 with General Mohamed Ould Abdel Aziz being declared the winner with 52 percent of the national vote. In Guinea, Captain Moussa Dadis Camara snatched power with the promise that national elections would be held in January of 2010 and that he himself would not run for election. This was in line with public statements that the December 2008 military coup was a necessary

⁴⁰ Stearns, S. 'African Union Suspends Guinea' Voice of America, 29 Dec. 2008 at <http://www.globalsecurity.org/military/library/news/2008/12/mil-081229-voa06.htm> accessed (8 July 2009)

⁴¹ Loc. Cit

⁴² 'Guinea Coup Leader Sacks Generals' (author unknown) News Africa at <http://english.aljazeera.net/news/africa/2008/12/2008122951415354778.html> 29 Dec. 2008 (accessed 15 July 2009)

Much of Guinea's economic and social woes can be attributed to the inept governance on the part of Guinea's long-standing ruler, Lansana Conte. As much as the political events that unfolded subsequent to his death need to be addressed within the framework of preventing illegal political transitions, it must be noted that the way in which Conte ruled can by no means be deemed democratic. The complete abandonment of core constitutional practices by the Conte government was met with little or no denunciation by African leaders or continental bodies. The case of Guinea highlights the fact that the rooting out of illegal transfers of power and the installation of immovable constitutional principles cannot legitimately take place whilst certain incumbent governments flagrantly violate these very same principles whilst in office.

intervention in order to save the country from ongoing mismanagement and corruption and that the unconstitutional takeover served as a stabilising mechanism for the state and its well-being. However, latest reports suggest that Camara has expressed his intention to stand as a candidate in the forthcoming election, leading many to believe that his junta's already established power will be used to sway the results.⁴³

Despite the fact that illegal transitions' of power in both Mauritania and Guinea have been followed up by the promise or eventuation of legal electoral processes, Africa cannot accept the end result of what remains an undemocratic and unconstitutional usurpation of power.

Changing times

A cause for optimism or cynicism (depending on one's interpretation) may be that these recent military coups have displayed some form of respect for the rule of law and democracy by allowing for post-coup elections to take place. History would suggest that African military coups are traditionally followed by a ruthless consolidation of power by the new ruling junta and a fresh snubbing of democratic and constitutional processes. It has been these traditional post-coup conditions that have severely set back the potential for positive institutionalisation, the growth of democracy, the development and respect of democratic norms, as well as the bastardisation of military coups or any other form of unconstitutional act as a means of political succession. In light of this, perhaps one could argue that the days of flagrant political takeovers are coming to an end in West Africa and that international, continental and regional emphasis on democracy and political legitimacy is beginning to inform norms throughout the sub-region, norms that even ambitious coup leaders can no longer ignore. As has been previously mentioned, Africa requires an avenue through which this development of positive political norms can be consolidated and furthered in order to bring about a truly resolute 'veil' of prescriptive political ideals. The African Union now stands at the forefront of advancing Africa's political ambitions and is now seen as a viable channel through which constructive political norms may be protected and developed.

The recent political events that took place in West Africa cannot be overlooked or quietly accepted due to the vague hope of precipitating some form of tolerable 'democratic' outcome, and this report will look at the post-coup reaction of the African Union to the military coups

⁴³ 'Captain Moussa Dadis Camara Fools Guineans', (author unknown) Africa News at http://www.africanews.com/site/Captain_Moussa_Dadis_Camara_fools_Guineans/list_messages/26955 16 September 2009 (accessed 18 September 2009)

in both Mauritania and Guinea. It will be made clear that the AU cannot afford to overlook the damaging effects that illegal transitions of power are capable of causing within the broader context of Africa's political development. Not only should incumbent governments be held accountable for any constitutional and/or democratic transgressions whilst in office but greater efforts must also be made to root out the incidence of unconstitutional political takeovers. By assessing the reaction (and its effectiveness) within the framework of the AU's (as well as its predecessor, the Organization for African Unity) past and present policies towards unconstitutional transitions of power, policy suggestions will be made in order to formulate more realistic and viable courses of action in dealing with military coups on the continent.

CHAPTER 2

THE AFRICAN UNION AND THE FIGHT FOR DEMOCRACY

“It is far better to be free to govern or misgovern yourself than to be governed by anybody else”⁴⁴

⁴⁴ Quote by Kwame Nkrumah, the First President of Independent Ghana

The recent upsurge in the incidence of military coups within the West African sub-region raises familiar questions regarding illegal political takeovers on the continent. If we accept that unconstitutional usurpation of power significantly undermines the potential for the principles of good governance, democracy, and constitutionality to become entrenched, then it follows that military coups cannot be seen as an isolated matter of domestic politics. Instead, an appreciation of the broader implications of military coups from a continental political development perspective is required. Africa's drive towards greater cohesion and cooperation amongst individual states has meant that setbacks in domestic democratic processes reverberate throughout the continent. In an era where the African Union has gained legitimacy as a continental organisation, it has become clear that preventing and resolving the damaging effects of military coups cannot be addressed on a domestic state level.

This chapter will illustrate the need for the African Union to reinforce both preventive and punitive measures in dealing with military coups and what policy mechanisms and practical measures the African Union currently has at its disposal. An understanding of the historical processes responsible for the formation of the Africa Union highlights the progress the organisation has made in placing greater emphasis on positive political development and rooting out unconstitutional transitions of political rule. Whilst the shortcomings of the AU's predecessor – the Organisation of African Unity (OAU) – are well documented, they are worth revisiting in order to appreciate the need for an efficient and effective Pan-African organization to take root. The issue of 'norm creation' and its importance in the context of Africa's future political development will also be illustrated throughout.

An Africa United

The notion of Pan-Africanism is by no means a novel concept in the context of Africa's history. As early as 1893, the promotion of greater African solidarity was taking shape through the initiation of the Congress on Africa as well as the creation of the African Association in 1897.⁴⁵ In recognising the often marginalised existence of many Africans, these early conferences looked to respond to the historical alienation of Africans and foster the idea that Africans should begin to draw on their own strengths and capacities in order to

⁴⁵ Murithi, T. 'The African Union: Pan-Africanism, PeaceBuilding and Development', Ashgate Publishing, Hampshire, 2005 pg 23

become self-reliant.⁴⁶ In recognising the challenges facing Africans and the achievement of a better future, it became clear that greater solidarity was paramount in advancing their own interests. As colonialism drew to a close on the continent of Africa, the ideals of Pan-Africanism gained even greater momentum and it was evident that newly elected governments would be designated the task of furthering the interests of their people and upholding the principles of collective African advancement.

Formed in 1963, the Organisation of African Unity can be seen as the “second generation” of efforts to institutionalize Africa’s desire for greater integration amongst individual states. Despite lofty rhetoric concerning the need for a ‘united Africa’⁴⁷, the desire to liberate white-ruled parts of the continent was one of the main unifying interests of the original 31 member states.⁴⁸ With a sense of optimism surrounding the liberation of many African states during the 1960’s, much was expected of the OAU in facilitating Africa’s future social, economic and political prosperity. Yet despite attempting to project itself as a viable continental organisation, the OAU soon came to be seen as a farce. A policy of non-intervention in the affairs of Member States was the defining characteristic of the OAU, rendering the organisation impotent in its ability to reconstitute national policies in line with the ideals of Pan-Africanism. Far from cultivating greater unification amongst individual states –as espoused by the ideals of Pan-Africanism – the OAU came to be a loose association of sovereign governments.⁴⁹

The reluctance on the part of individual states to relinquish power to a higher authority meant that Pan-Africanism was only being paid a superficial tribute in the sense that Heads of State were willing to come together under the banner of collective African prosperity, yet were blatantly unwilling to concede any form of individual authority in the name of creating an improved African future. Seen as a ‘toothless talking shop’⁵⁰, the OAU nurtured the idea that African Heads of State would remain immune from any form of castigation and that the principles of accountability and transparency in national governance would largely go

⁴⁶ Ibid. pg 8

⁴⁷ Kwame Nkrumah, the first president of Ghana, was the most prominent advocate of a ‘United States of Africa’. He believed that a continent divided into sovereign independent states was a weak Africa and that all states should have committed to being governed by a singular federal government.

⁴⁸ Makinda, S. And Wafula Okumu, F. ‘The African Union: Challenges of Globalization, Security, and Governance’ Routledge, Abingdon, 2008 pg 11

⁴⁹ Legum, C. ‘The Organisation of African Unity – Success or Failure?’ in International Affairs, Vol. 51, No. 2 (Apr. 1975) pg 209

⁵⁰ Murithi, T. op cit. pg 26

unchecked. With issues of intra-state conflict and political malaise being declared out of bounds for the OAU; the ‘trade union of tyrants’ preferred to focus on the maintenance of their existing power and the security of state elite interests.⁵¹ The inability of the OAU to monitor and police the affairs of its own Member States became the most glaring deficiency in the organisations claim for legitimacy. Political authoritarianism, corruption, economic mismanagement, bad governance, and the abuse of human rights all went largely unchecked during the time of the OAU.⁵²

A continent led astray

A consequence of the OAU’s policy of non-intervention was that the way in which political power was exercised, and transferred within its member states became immaterial.⁵³ Thus, whilst paying lip-service to the core principles of African advancement, the OAU created a precedent of non-interference and effectively undercut the possibility of promoting genuine political development amongst its members. The failure of the OAU to implement timely and adequate forms of preventative and punitive measures in dealing with non-compliant members meant that its contribution to African political development was to institutionalise the notion of ‘action without consequence’ when it came to issues of constitutionality, democracy and the rule of law. If we accept institutions as ‘stable sets of norms, rules, and principles’ that ‘constrain activity, shape expectations, and prescribe roles’⁵⁴ then the OAU was successful in creating certain institutions. However, the aforementioned shortfalls in OAU policy enforcement meant that established expectations and norms surrounding good governance and the respect for constitutionality fell very short of what can be deemed positive institutionalisation. In tolerating political malpractice, the OAU has had a significant hand in shaping norms of political accountability and the historical contempt many African leaders have maintained regarding good governance and constitutionality.

Hence, the plethora of military coups and other illegal transitions of power that took place during the existence of the OAU were not met with any form of sufficient response and were left unrestrained in what became an illegitimate political ‘free for all’. Beyond calling for the

⁵¹ Van Walraven, K. ‘From Union of Tyrants to Power to the People? The Significance of the Pan-African Parliament for the African Union’ in *Africa Spectrum*, Vol. 39, No. 2 (2004) pg 200

⁵² Murithi, T. op cit. pg 3

⁵³ Kameldy, N. ‘An Analysis of the Military Coup in Mauritania and its Implications for Democratic Governance’ in *Open Society Institute*, African Governance Monitoring and Advocacy Project (AFRIMap), October 2008, pg 1

⁵⁴ Makinda, S. And Wafula Okumu, F. op cit. pg 7

‘unreserved condemnation, in all its forms, of political assassination as well as of subversive activities on the part of a neighbouring State or any other States’⁵⁵ the OAU failed to explicitly sight unconstitutional political takeovers (and the desired response to such transitions of power) within its charter. It was only towards the end of the Organisation of African Unity’s existence did the organisation formally address the issue of unlawful political takeover and whilst this did contribute to later policy formation around the issue, it can only be considered too little too late within the context of the OAU’s history.

Table 2.1

Incidence of military coups in Africa by region during the tenure of the OAU (taken from beginning 1964 – end 1999)⁵⁶

Region	Number of military coups
Southern Africa	3
East Africa	9
West Africa	36
North Africa	9
Central Africa	10
Islands Off Mainland Africa	6
Total	73

An analysis of military coups in Africa and the subsequent response of the African Union must take into account the role of the OAU and its failure to adequately address political actions which have historically set the tone of Africa’s negative political development. The OAU bequeathed the African Union many burdensome legacies and one of the primary tasks of the AU is to now break free from the institutionalised ‘shackles’ of its predecessor.

⁵⁵ Charter of the Organization of African Unity – Principles Article 3 (5)

⁵⁶ Thomson, A. ‘An Introduction to African Politics’ Routledge, New York, 2000, pg 128

As the OAU only came into existence on the 25th of May 1963, those military coups that took place during the year of 1963 have not been included due to the fact that the organisation would, in all likelihood, have been unable to influence the course of actions in those particular countries within the initial 6 month period from its inception. Those countries grouped as being situated off mainland Africa include: The Comoros, Madagascar, Mauritius, Sao Tome and Principe, Cape Verde and the Seychelles. Also, states have been grouped according to geographical sub-region and not according to affiliation with regional organisations.

Dying with the times

The blind commitment that the OAU made to the principle of sovereignty served to restrict the ability of the organisation to hold its member states accountable for the failure to uphold their commitment to the OAU and its self-determined principles. In many respects, the Organisation of African Unity was a product of its times. The interests and identity of individual African states came to define the principles, concerns and interpretations of its mission.⁵⁷ Norms of global governance were also to influence the state-centric and sovereign tone of the organisation. Indeed, in the first two decades of the organisation's existence, global issues of good governance, human rights, and constitutionality were usually of little concern amidst the tensions and security concerns of the Cold War and a general preoccupation with inalienable sovereignty and non-interference. Yet the global political landscape has changed dramatically when compared with the first few decades of the OAU's existence. Since the inception of the OAU until its eventual termination, global politics have embraced a greater awareness and respect for increased political accountability and a healthier adherence to the rule of law. In particular, there have been comprehensive shifts in conceptions regarding sovereignty.⁵⁸

The principle backbone of the modern Westphalian political system, absolute sovereignty has come to be seen as a notion that is incompatible with contemporary political trends.

Whilst the Charter of the United Nations enshrines the principles of sovereignty and non-intervention⁵⁹, this internationally recognised doctrine has often been seen as a strategic tool for tyrannical and inept political regimes to call upon in order to avoid any form of international rebuke. Unsurprisingly, the immovable adherence to sovereignty on the part of the OAU goes hand in hand with both its unwillingness and policy-induced inability to challenge noncompliant member states. Modern conceptions of sovereignty no longer endorse the concept of 'absolute' sovereignty. Rather, sovereignty has come to be seen as a responsibility on the part of individual governments to endorse democratisation and good

⁵⁷ Ibid. pg 27

⁵⁸ Issues of gross human rights violations and humanitarian intervention prompted much of the contemporary discourse regarding state sovereignty and the need to intervene in the domestic affairs of certain states when the situation called for it. United Nations Secretary-General Kofi Annan was a primary advocate of reconceptualising absolute sovereignty and he was to oversee the creation of the International Commission on Intervention and State Sovereignty (ICISS). See Murithi, T. 'The African Union's Transition from Non – Intervention to Non-Indifference: An Ad Hoc Approach to the Responsibility to Protect.' At http://library.fes.de/pdf-files/ipg/ipg-2009-1/08_a_murithi_us.pdf

⁵⁹ United Nations Charter, Article 2 (1) and Article 2 (7)

governance as well as protect the interests of their civilian population. In this way, sovereignty is no longer seen as an automatic right bestowed upon any individual or political party that holds power but rather an undertaking on the part of those in power to live up to their duties as shaped by the international community.

As such, the 'right' to sovereignty can only be bestowed and maintained by those who comply with contemporary ideals of good governance and responsible rule. The once immutable concepts of sovereignty and non-intervention are now subject to predetermined factors of political legitimacy. Global actors and institutions are now increasingly willing to bypass a state's right to the control of its domestic affairs in instances where intervention is deemed necessary. Whilst the UN charter still upholds the principle of sovereignty as it was originally conceived, 'new' ideas surrounding sovereignty have become sufficiently accepted in practice to be regarded as a de facto international norm with many modern-day institutions shaping their political policy frameworks around such ideas.⁶⁰

In the same way as the inception of the OAU was a product of its time so too did the times dictate the need for an overhaul of the organisation. The beginning of the 1990's saw the Cold War draw to a close and with it, an end to many African states' embroilment within

Cold War politics. The Cold War years saw a number of African states preoccupied with garnering support from either global superpower, usually at the expense of regional stability and good governance.⁶¹ Global trends in democratisation, the growing popularity of liberal political principles, the demand for respect of human rights and for political transparency by civil society organisations, and the re-conceptualisation of sovereignty ultimately rendered the OAU an archaic entity that could no longer claim any form of legitimacy in the face of its ongoing inability to effectively reign in its unruly members.

⁶⁰ Evans, G and Sahnoun, M. 'The Responsibility to Protect' in Foreign Affairs, Vol. 83, 2002 pg 102
Organisations such as the North Atlantic Treaty Organisation (NATO), the World Trade Organisation (WTO) and the European Union (EU) in particular are examples of organisations in which elements of individual sovereignty are 'pooled' under the control of the organisation itself. Individual states consent to forgoing a degree of autonomy in order to achieve common ends and agree to have a central organisation determine binding decisions that must be assimilated by all member states. A commitment to an organisation of this nature dictates a concurrent commitment to the ideals and practices as set by the organisation.

⁶¹ Racioner, D. (ed.) 'Democracy in Africa: The African Charter on Democracy, Elections and Governance.'
IDASA An African Democracy Institute, IDASA Publishing Pretoria, 2009, pg 3

A new dawn

At the end of the 20th century, it became clear that Africa required a continental organisation that was willing and able to take on the new challenges of collective governance. The African Union was to rise out of the ashes of the OAU and was immediately faced with the task of undoing the ingrained perception that member states could act without impunity. Absolute sovereignty could no longer stand in the way of taking decisive action against those states that failed to live up to their commitments to better governance and due regard for the principles of democracy and constitutionality. However, since taking over the reigns of continental authority, it is evident that the AU faces a broader task than that of simply bringing individual states into line – the leaders of the AU need to reconstruct a new set of norms for the African political arena. Unlike the OAU, the African Union must begin to place a renewed emphasis on not only how its member states conduct their domestic political affairs, but the manner in which transitions of political power take place.

During the time of the OAU, unconstitutional political usurpations became an accepted means of political transition – a norm. The definition of unconstitutional changes of government (UCG) has widely been accepted as any one of the following acts:

- A military coup d'état against a democratically elected government
- Intervention by mercenaries to replace a democratically elected government
- Replacement of democratically elected governments by armed dissident groups and rebel movements; and
- The refusal by an incumbent government to relinquish power to the winning political party after free, fair and regular elections.⁶²

The link between illegal political takeovers (military coups remaining the most common and deliberate) and the undercutting of broader political development has already been made, and in line with this, the African Union and its ambitious goals for promoting African

⁶² Souare, I. 'The AU and the Challenge of Unconstitutional Changes of Government in Africa' [Institute for Security Studies](#), ISS Paper 197, August 2009

advancement cannot be achieved without effectively preventing and responding to the encumbrance of military coup d'états.

The African Union should be seen as an evolutionary entity and part of Africa's developing ideal of true Pan-Africanism. The proposal to establish the African Union was put forward by the OAU Assembly Heads of State and Government in 1999 in Sirte, Libya.⁶³ With the signing of the African Union Constitutive Act in July of 2000 and the subsequent inauguration of the organisation in July 2002, the AU officially took over all the assets and liabilities of its predecessor. The objectives and principles enshrined in the AU Constitutive Act, whilst maintaining many of the guidelines adopted by the OAU, represents a marked progression in terms of the authority the organisation has afforded itself. The investiture of the AU Constitutive Act could only come about once all member states had endorsed the guiding principles and objectives which the Act looks to preserve and in this way, member states have committed to upholding the overall goals that the AU has set for itself. However, many core principles of sovereignty have been assimilated into the African Union's overarching guidelines of continental governance. The AU still intends to '[D]efend the sovereignty, territorial integrity and independence of its Member States'⁶⁴ and upholds the notion that all member states should be considered sovereign equals.

Ringling the changes

The principles of the AU also dictate that no state should interfere in the domestic affairs of another. However, the AU has diverted from the obstinate approach of 'no interference' by giving itself the authority to 'intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.'⁶⁵ This has been welcomed as a significant step in the direction of cultivating genuine authority for the organisation. Another important principle that the organisation has introduced is the outright condemnation and rejection of unconstitutional changes in government.⁶⁶ When one considers that one of the core objectives of the African Union has been to promote and respect democratic principles and institutions, good governance, and the

⁶³ Murithi, T. op cit. pg 3

⁶⁴ Constitutive Act of the African Union, Article 3(b)

⁶⁵ Ibid. Article 4(h)

⁶⁶ Ibid. Article 4(p)

rule of law, it is only fitting then that the AU has made explicit reference of illegal transitions of governance in their Constitutive Act.

However, the introduction of the AU Constitutive Act does not mark the first attempt at formally recognising and denouncing illegal political transitions in Africa. Despite its shortfalls, the OAU should be credited with identifying the debilitating effects that military coups and other forms of UCG have had on Africa's democratic development. An OAU Heads of State and Government summit in Harare in 1997 saw the formal adoption of a common position on unconstitutional changes in government. Heads of State would elaborate on this position during an OAU Summit in Algiers in 1999, ushering in what was known as the 'Algiers Decision on Unconstitutional Changes in Government.'⁶⁷ One of the more concrete decisions to come out of the Algiers summit was the 'banning from the OAU Summits of all governments that had taken power through a coup since the last summit.'⁶⁸ These early endeavours to formally make mention of UCG by the OAU were, for the most part, superficial in nature. Whilst the OAU could no longer overlook illegal usurpations of power on the continent, the organisation's traditional propensity for inaction and its limited enforcement capacity meant that any formal agreements surrounding UCG lacked the required follow-up action.

In spite of this, a movement towards preventing and responding to illegitimate political takeovers maintains its roots in the initial attempts of the OAU to bring the issue to the discussion table.

A declaration to progress

The Lomé Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (commonly referred to as the Lomé Declaration) was adopted at the 36 Ordinary Session of the Assembly Heads of State and Governments of the OAU in the Tongolese capital between 10-12 July 2000.⁶⁹ Taking much from both the Harare and Algiers Summit of 1997 and 1999, the Lomé Declaration set out a definition of what constituted an unconstitutional change of government, highlighted a set of common values and principles for democratic governance on the continent, and put forward measures and actions that the

⁶⁷ Ikome, F.N 'Good Coups and Bad Coups: The Limits of the African Union's Injunction on Unconstitutional Changes of Power in Africa' Institute for Global Dialogue, Midrand, 2007, pg 31

⁶⁸ Ibid. pg 32

⁶⁹ Souare, I. op cit.

OAU would progressively take to respond to such changes in government.⁷⁰ It is important to note that the policy framework established in Lomé (under the name of the Organisation of African Unity) has been assimilated into the African Union's broader policy concerning UCG and its prescriptions are the guiding principles upon which the AU now approaches when dealing with such acts. The policy framework that was precipitated out of the Lomé Summit afforded the OAU/AU the ability to immediately and publically condemn any UCG and demand that constitutional order be restored within six months.⁷¹ Within this six month period, the state in which the unconstitutional takeover has occurred should be suspended from participating in any of the OAU/AU policy organs, stripping the state concerned of any bona fide membership capacity (yet this does not preclude the state from honouring its financial contributions to the OAU/AU budget).⁷²

It should be made clear that despite the ambiguous wording within the declaration, the state itself is not precluded from entering into official AOU/AU affairs, but rather the offending government.⁷³ The Secretary-General/Chairperson of the OAU/AU is assigned the task of making contact with the perpetrators of an unconstitutional takeover with the view of establishing their intentions to re-establish legitimate constitutionality within the state. This pressure by the organisation should be exerted in conjunction with the support of other member states in an effort to place as much moral pressure on the perpetrators as possible.⁷⁴ The framework also explicitly outlines the fact that at the expiration of the six months suspension period, a number of limited and targeted sanctions can be levelled at an uncooperative regime, including visa denials for the perpetrators, restrictions concerning government-to-government contact, and various trade restrictions.⁷⁵

⁷⁰ Ikome, F.N op cit. pg 33

⁷¹ 'Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government', AHG/Decl.5 (XXXVI) 2000

⁷² Ibid.

⁷³ Naldi, G. and Magliveras, K. 'The African Union: A new Dawn for Africa?' in the International and Comparative Law Quarterly, Vol. 51, No. 2 (Apr. 2002) pg 424

⁷⁴ Souare, I. op cit.

⁷⁵ 'Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government' op cit.

When one considers how 'tentative' the OAU had been in dealing with UCG and how undeveloped (almost non-existent) their UCG policy mechanisms were at the time of the African Union's inception, it highlights how swiftly the AU was in adopting a far more resolute approach in dealing with issues of democracy and good governance. The transition from simply banning a coup-induced government from all OAU Summits to the AU introducing a range of measures that clearly demand a return to constitutional order and a respect for democracy was swift in its occurrence. The AU acted without vacillation and should be applauded for precipitating such a rapid turnaround in continental policy.

The notional tenets supporting the Lomé Declaration have not gone without their fair share of criticism. Of primary concern is the fact that the declaration leans almost exclusively on the procedural dimensions of legitimacy – establishing prescriptions concerning how power is *acquired* and not how it is *exercised*. The nature of the declaration fails to substantively address the often undemocratic practices of incumbent political regimes that, despite often being legitimately elected into office, subvert constitutional principles and hardly uphold democratic ideals. Further question have been raised over the process and outcomes of elections in Africa. Traditionally seen as a prerequisite for democratic transitions in government, incumbent governments have often allowed ‘free and fair’ elections to take place, only to discredit them by using state resources and varying means of duress to influence the outcome in their favour. One could fairly suggest that these underlying ‘foundations’ of democracy are of more concern and should have the backing of a ‘Lomé - style’ declaration that clearly sets out procedures and responses to deal with incumbent governments (whether democratically elected or not) that fail to live up to the prescribed AU principles concerning good governance and constitutionality.

It has become increasingly evident that the AU must respond to both the acquisition and exercise of political power in Africa in order to comprehensively ‘weed-out’ any form of unconstitutionality or oppressive governance on the continent.

This report recognises the importance of promptly and effectively addressing the transgressions of legitimately elected governments and (as addressed in chapter 1) history has shown that both democratically elected and military-ruled governments have failed to bring adequate stability and democratic permanence to the continent. In this regard, an organisation like the African Union should continue to endeavour in establishing and enforcing a more concrete policy framework in dealing with those African governments that, whilst legitimate in many respects, continue to tarnish Africa’s prospects of achieving comprehensive democracy and constitutionality. However, the illegal usurpation of elected governments will continue to undercut any progress that is made in the promotion of democratic ideals and poses a direct challenge to the construction of accepted political norms on the continent. As the Lomé Declaration suggests, Africa should view military coups ‘as an unacceptable and anachronistic act, which is in contradiction of our commitment to promote democratic principles and conditions.’⁷⁶ The AU is in a position in which it is able to create and protect

⁷⁶ Souare, I. op cit.

such norms. The Lomé Declaration and the organisation's Constitutive Act, even when taking into account the large schism between theory and practice, still serve to map out the normative prescriptions for constitutionality and respect for the rule of law.

Securing a democratic future

Taking into account the Lomé Declaration and the Constitutive Act of the African Union (which effectively reaffirms and supports the policy framework established in Lomé), the third mechanism relating to UCG is the African Charter on Democracy, Elections and Governance. This (not yet officially ratified) charter was adopted in Addis Ababa during the 8th Ordinary Summit of the African Union in January 2007 (often referred to as the Addis Charter). The Addis Charter can be seen as the end result of Africa's initial post-OAU democratisation process and has taken much from forgoing developments in formulating a comprehensive policy framework concerning good governance, constitutionality and democracy. Reaffirming many aspects of both the AU Constitutive Act as well as elements of the Lomé Declaration, some of the goals of the Addis Charter include: adherence by AU member states to principles of good governance, human rights, constitutional order, the rule of law, political transparency and accountability, and the promotion of democratic practice and culture.⁷⁷ In setting out the principles by which the Charter will be enforced, the AU has once again reiterated the threat posed by UCG. By stating its support for the 'condemnation and total rejection of unconstitutional changes of Government',⁷⁸ and making explicit reference to the need for member states to 'take all appropriate measures to ensure constitutional rule, particularly constitutional transfer of power',⁷⁹ the Addis Charter is a vital policy tool in restating the normative prescriptions of constitutional rule in Africa.

The Charter adopts a holistic approach to democracy, in that it covers a broad spectrum of issues pertaining to the maintenance and furthering of democratic ideals. Human rights, regional cooperation, economic development, free and fair elections, respecting defined terms of political office, support for civil society, and the separation of powers are some of the issues that the Charter addresses. All of these issues maintain a bearing on the ability for widespread democracy to take root in Africa. Not only does the Charter tackle head-on

⁷⁷ 'African Charter on Democracy, Elections and Governance' Chapter 2, Articles 2

⁷⁸ Ibid. Chapter 3, Article 3

⁷⁹ Ibid. Chapter 3, Article 5

the governance issues that have long plagued the continent, it also establishes democracy and popular participation as a fundamental human right.⁸⁰

An entire chapter of the Addis Charter has been set aside to map out the necessary courses of action to be taken in the event of an UCG. Whilst reaffirming the proposed punitive measures of the Constitutive Act (suspension from all AU activities, imposition of certain economic and travel sanctions etc.), the Addis Charter affords the AU the power to actively seek out, detain and prosecute perpetrators of an unconstitutional putsch before a competent AU court.⁸¹ Unconstitutional transfers of political power command a significant amount of focus within the Addis Charter and it is clear that the AU now perceives such transitions as one of the primary challenges to promoting democratic norms in Africa. The Preamble of the Addis Charter has gone as far as to state that African leaders are concerned ‘about the unconstitutional changes of governments that are one of the essential causes of insecurity, instability and violent conflict in Africa.’⁸²

Up to the task

After assuming the responsibility of continental governance, the African Union now stands in a unique position in which it is able to promote a new set of political norms and values in Africa. The AU has already demonstrated that the principles of absolute sovereignty and non-interference have no place in Africa’s future political development. This shifting conception of sovereignty and a greater willingness on the part of the AU to intervene in the domestic affairs of individual states has provided a platform upon which the organisation can more effectively deal with the pressing issue of unconstitutional changes of government.

The AU Constitutive Act, the Lomé Declaration and the African Charter on Democracy, Elections and Governance have all expressed the need for the Union to intervene in instances where an unconstitutional political takeover has been staged, most notably via military coup.⁸³ The AU has set itself a broad mandate that seeks to entrench a culture of democracy and constitutionality on the continent and to this end, effective preventative and responsive

⁸⁰ Ngarhodjim, N. ‘African Charter on Democracy, Elections and Governance: A critical Analysis’ [Open Society Institute](#), African Governance Monitoring and Advocacy Project (AFRIMap), May 2007, pg 2

⁸¹ ‘[African Charter on Democracy, Elections and Governance](#)’ op cit. Chapter 8, Article 25(5)

⁸² Souare, I. op cit.

⁸³ Adebajo, A and Rashid, I. (eds.) ‘[West Africa’s Security Challenges: Building Peace in a Troubled Region](#)’, Lynne Rienner Publishers, Inc. Colorado, 2004 pg 136

policy mechanisms are required. By condemning the act of military coups and other UCG through binding accords, the AU will not only be able to stamp out a genuine threat to sustained democracy, it will also begin to effectively generate an accepted norm of political governance. Thus, the success of the aforementioned policy mechanisms in effectively thwarting future unconstitutional political takeovers has a considerable bearing on the ability of the African Union to achieve its broader goals for the continent. The reaction and repercussions flowing from the recent military coups in Mauritania and Guinea lend insight into how the African Union's policies regarding UCG are being implemented.

With the recent political upheavals in West Africa serving as a backdrop, the African Union's current policy mechanisms must be critically assessed in order to establish whether or not they will prove to be successful and if not, what policy reformations should be taken on board by the AU to remedy the situation.

CHAPTER 3

RESPONSE AND PREVENTION

“If we do not maintain Justice, Justice will not maintain us.”⁸⁴

⁸⁴ Quote by Francis Bacon, English philosopher, statesman, scientist, jurist, lawyer, and author.

The African Union now places a considerable emphasis on the issue of unconstitutional changes of government (UCG) and recognises the importance of successfully dealing with this recurrent challenge to positive political growth. The ratification of the Lomé Declaration and the development of African Charter on Democracy, Elections and Governance (yet to be ratified at the time of writing) points to the adoption of a more authoritative stance by the AU. The organisation's Constitutive Act is further evidence of the African Union's resolve to more effectively control not only how political power is exercised, but also how political power is attained. This robust stance on the imperative issues of constitutionality and good governance has done much to strengthen overall awareness regarding democracy and the rule of law. Importantly, the African Union maintains the ability to significantly inform contemporary norms concerning Africa's political landscape.

Whilst the Organisation of African Unity neglected to address issues of acceptable political transition and good governance, thereby failing to instil norms of accountability and political transparency, the AU can now influence Africa's political trajectory by establishing responsible governance and constitutionality as immovable political norms. However, the creation of policy mechanisms needs to be supplemented by the effective implementation of the prescriptions and responses that these mechanisms espouse. In the interests of legitimacy, the African Union cannot be seen to be an organisation that only 'barks' and does not 'bite'. It is imperative that the AU distinguishes itself from its decidedly ineffectual predecessor by following through with its commitment to promote a culture of democracy across the continent.

Stamping out the incidence of unconstitutional political takeovers is now posited towards the centre of the African Union's broader mandate. This mandate looks to create a political atmosphere in which the principles of constitutionality dictate the terms by which governments come into power, as well as the terms by which that power is exercised. It is with this in mind, that the recent political events in Mauritania and Guinea should be seen as an alarming diversion on Africa's road to immutable constitutional rule and political legitimacy.⁸⁵ Thus, if the current policy mechanisms aimed at preventing and responding to unconstitutional changes of government are deemed ineffectual, attempts by the AU to achieve its desired goals for the political development of the continent would be in jeopardy.

⁸⁵ United Nations Security Council Report: Update Report. 'The Resurgence of Coups D'états in Africa'. 15 April 2009. No. 3 pg 1

The effectiveness of current policies are largely influenced by both a) their prescriptive content i.e. the nature of the policy itself and b) how these various policies are implemented by the AU. An analysis of the AU response to the military coups in Mauritania and Guinea lends insight as to how these two factors will largely determine whether the AU can successfully limit the frequency of unconstitutional political takeovers; and instil a corresponding acceptance of constitutionality and democratic rule as an ingrained norm.

Standing its ground

The African Union wasted little time in publically condemning the political events that occurred in both Mauritania and Guinea in 2008. Following the August 6th coup in Mauritania, the AU made it clear that it would suspend Mauritania's membership in the organisation until constitutional order had been restored. The organisation immediately called for the release of the country's democratically elected leader, Sidi Mohamed Ould Cheikh Abdallahi. These demands were followed by a high level mission to Mauritania on December 6th, in which AU representatives engaged with coup leader General Mohamed Ould Abdel Aziz and received a commitment from him to release President Sidi Mohamed Ould Cheikh Abdallahi without conditions by December 24th.⁸⁶ This promise was indeed kept by Mauritania's coup leader, yet this did by no means represent the return to constitutional order that the AU had demanded.

In a number of Peace and Security Council (PSC) communiqués, the AU Constitutive Act, the Lomé Declaration, and the African Charter on Democracy, Elections and Governance were all referenced in the African Union's call to respect constitutionality. Specifically in line with the provisions of the Lomé Declaration, the AU urged the Chairperson of the AU Commission to continue to place pressure on Mauritania's coup leaders and persist with demands for a return to constitutional order in the country. Moreover, the PSC declared that if constitutional order was not restored in Mauritania by February 5th 2009, the PSC 'will impose measures, including targeted sanctions, in particular visa denials, travel restrictions and freezing of assets, to all individuals, both civilian and military, whose activities are designed to maintain the unconstitutional status quo in Mauritania.'⁸⁷ Upon failing to meet

⁸⁶ African Union: Communiqué of the 164th Meeting of the Peace and Security Council – Mauritania, Addis Ababa, 27 December 2008

⁸⁷ Loc. Cit

this requirement, the PSC followed through by imposing a travel ban on civilians and soldiers in the military government as well as a freezing off their assets.

The AU continued to pursue a return to constitutional order in Mauritania with both the Chairperson of the Executive Council of the AU and the Commissioner for Peace and Security visiting the country and maintaining communication ties with the military government.⁸⁸ This continual pressure led to the formation of a transitional government, divided between civilian politicians and soldiers that was established to take hold of government until elections could be held in July 2009. The AU reacted to the formation of an interim government by lifting the sanctions that were imposed in February and seemed pleased with the developments in Mauritania. Despite the fact that General Mohamed Ould Abdel Aziz put himself in the running for the presidential election, the AU welcomed the election and hoped that it would take place in the 'required conditions of transparency, fairness, and freedom'.⁸⁹ Amid extensive calls of electoral malpractice, the results of the July 18th elections rendered General Mohamed Ould Abdel Aziz the elected President of Mauritania.⁹⁰

A new generation of coup

The events in Mauritania have placed the AU in extraordinary position in which, although its calls for a return to constitutional order have technically been met, one cannot ignore the circumstances under which this 'constitutional order' has been brought about. Opposition parties were quick to point out that the military junta used its position of power to sway public opinion and instigated a number of irregularities in voting conditions in which the results were 'prefabricated, meant to legitimise the coup that brought General Aziz to power.'⁹¹ Many observers have concluded that the events in Mauritania do not represent a bona fide return to constitutional order and that the increasing incidence of 'creeping coups'

⁸⁸ African Union: Communiqué of the 186th Meeting of the Peace and Security Council, Addis Ababa, 6 May 2009

⁸⁹ 'AU lifts Mauritania Sanctions' (author unknown) at <http://www1.voanews.com/english/news/a-13-2009-07-01-voa36-68819917.html>, July 1 2009 (accessed 5 October 2009)

⁹⁰ Sillah, E. 'Mauritania: Election Results Challenged' at <http://allafrica.com/stories/200907220006.html>, 21 July 2009 (accessed 7 October 2009)

⁹¹ Loc. Cit

or ‘coup conversion’⁹² must be immediately addressed. This phenomenon is characterised by a successful coup d’état that is followed by the staging of ‘free and fair’ elections. As one would expect, those that have already taken power maintain a considerable advantage over political opposition and are often quick to use state resources and man-power to manipulate election results in their favour. The resultant outcome of these types of elections often instate coup leaders into ‘official’ political office and distract regional and international observers from the initial coup and the bypassing of constitutional order.

The 2008 military coup in Guinea, lead by Captain Moussa Dadis Camara, precipitated a similar response from the AU. The country was suspended for a period of six months from taking part in all AU activities until constitutional order had been reinstated. In its condemnation, a PSC statement dubbed the coup a ‘flagrant violation of the Constitution of Guinea and of the relevant AU instruments’⁹³. The Chairman of the AU Commission immediately made contact with Guinea’s coup leader and communicated the fact that the AU would impose targeted sanctions on the military junta if free and fair elections were not held in due time. Again, the situation in Guinea represents a case of a ‘creeping coup’ in which the military junta made lofty promises regarding the formation of a caretaker government that would steer the country to credible elections within two years.⁹⁴ In the midst of the AU calling for a legitimate return to constitutionality, the military regime set about appointing a civilian Prime Minister and forming a transitional government in January of 2009. Beyond this, Captain Moussa Dadis Camara himself stated that neither he nor the newly elected Prime Minister would stand in the planned presidential elections.

These pronouncements seemingly suggested a genuine commitment to constitutionality and an indication that persistent AU pressure is able to alter the trajectory of what traditionally may have simply been a political power-grab without any subsequent ‘democratic considerations’. However, as events in Guinea have played out, it is clear that the military junta under Captain Camara is more concerned with holding onto its position of power than

⁹² The terms ‘creeping coup’ and ‘coup conversion’ have been lent from a statement by the Board of the Mo Ibrahim Foundation (October 6 2009). The Foundation was established by Sudanese billionaire Mo Ibrahim and provides monetary rewards for those African leaders who uphold responsible methods of governance.

⁹³ ‘Guinea: African Union Suspends Country over Coup’ (author unknown) at www.allafrica.com, 26 December 2008 (accessed 27 July 2009)

⁹⁴ Souare, I ‘Explaining the December 2008 Military Coup D’état in Guinea’ at kms1.isn.ethz.ch/serviceengine/Files/ISN/101182/.../Chapter+4.pdf (accessed 27 July 2009)

leading the country down the path of democracy. The killing of over 150 civilians by the Guinean military on 28th September 2009 exposed the true brutality of the Camara regime and lead to the imposition of targeted sanctions by the AU.⁹⁵ The killings occurred during a protest against the prospect of Camara running in the scheduled January 2010 elections.

Halting the creep

The unconstitutional usurpation of power, even when followed by subsequent elections, should still be viewed as an undercutting of democratic principles and constitutionality (regardless of the attempts by the illegal government to legitimise themselves via the staging of elections). In the case of Mauritania however, the AU electoral observer mission declared the elections ‘free, transparent, credible and democratic’⁹⁶, effectively recognising General Aziz’s right to the presidency. This came after the AU had insisted that no member of the military junta should be allowed to stand in future presidential elections. Although this type of recognition would seem to contradict the African Union’s broader ideals of genuine democracy and constitutionality, an analysis of its current policy mechanisms reveals that as it stands, the AU does not possess the legal capacity to adequately address the issue of post-coup self-legitimation.

Considering that neither the Lomé Declaration nor the AU Constitutive Act speak directly to the issue of ‘creeping coups’, the initial insistence that no member of the military junta stand in the elections could not be backed up by any existing AU policies.⁹⁷ Only the African Charter on Democracy, Elections and Governance deals explicitly with this issue by stating that the ‘perpetrators of unconstitutional change of government shall not be allowed to participate in elections held to restore the democratic order or to hold any position of responsibility in political institutions of their State’.⁹⁸ However, it must be noted that the Addis Charter has not yet entered into force and thus far, only Mauritania (ironically) and Ethiopia have ratified the charter.⁹⁹ ‘Creeping coups’ pose a complex challenge to the AU

⁹⁵ ‘AU Imposes Sanctions on Guinea’ (author unknown) at <http://english.aljazeera.net/news/africa/2009/11/2009117173158992574.html>, November 7 2009 (18 July 2009)

⁹⁶ Square, I. ‘Mauritania: Auto-legitimising Another Coup Maker in Africa’, African Security Analysis Programme, Institute for Security Studies, 14 August 2009

⁹⁷ Loc. Cit

⁹⁸ ‘African Charter on Democracy, Elections and Governance’ Article 24 (4)

⁹⁹ In order for the Addis Charter to come into effect, 15 out of the 53 member states of the African Union must ratify it. See www.african-union.org

and as part of their response to UCG, should look to take a firm stance in instances where genuine constitutionality is being subverted. A degree of overlap is apparent in the case of ‘creeping coups’ as this type of political event raises questions regarding both the African Union response to coup d’états as well as the organisation’s monitoring of elections and its power to declare certain elections undemocratic. One could fairly suggest then that the AU was legally powerless to adequately address the post-coup situation in Mauritania and unable to affect any reform in Guinea, yet made use of its current (and ratified) policy mechanisms to their full extent. In this respect, the AU should be credited with referencing its available policy options and putting them into effect.

The follow-up

The AU has adopted a firm stance in dealing with the military coup d’états in both Mauritania and Guinea. The organisation has not wasted any time in making use of its various UCG-orientated policy instruments, be it the suspension of Mauritania and Guinea from all AU activities or the imposition of targeted sanctions. From this perspective, the AU cannot be faulted in terms of how it has applied its prescribed policies. Strictly speaking however, this systematic application has not precipitated the desired outcome in either Mauritania or Guinea. Mauritania’s coup leader now maintains a ‘legitimate’ claim to the presidency thanks to highly tainted presidential elections, whilst the leader of Guinea’s military coup is stubbornly avoiding any genuine commitment to constitutionality. Along with the query regarding how the AU applies its UCG policies, a discussion on the follow-up capabilities of the AU falls into the broader question of how the AU *responds* to UCG.

It has already been established that the AU should be credited for the way it has dealt with both military coups; actively applying the policies instruments it has established for dealing with UCG. However, the application of these policy instruments clearly does not automatically suggest that coup perpetrators will fall into line, be it via legitimate elections or the handing back of power to the pre-coup government. Some observers have criticised the substantive content of the various UCG policy instruments as being too vague or limited in scope. The imposition of sanctions and the barring of coup-induced governments from taking part in AU activities is often seen as an inadequate response, even when these policies are accurately applied. The barring of coup perpetrators from taking part in AU activities can only realistically limit the overall credibility of the new regime and perhaps the potential for

establishing political ties with other member states. Yet for those coup perpetrators looking to take hold of power and enjoy the benefits of controlling state resources, this exclusion is a small price to pay. Applying targeted sanctions against coup perpetrators is limited by systemic faults, with Issaka Souare of the Institute for Security Studies in Pretoria suggesting that the African Union ‘does not have an effective power of stick and carrot, so the sanctions are very symbolic’.¹⁰⁰ In calling for a more substantive response, certain analysts have called for the AU to take note of the military approach adopted by the Economic Community of West African States (ECOWAS) in safeguarding civilian governments within its member states.¹⁰¹ Many hold the view that the implementation of ‘soft measures’ cannot realistically hope to provide the kind of deterrent required to make coup-plotting a truly costly exercise for potential coup instigators.¹⁰²

Beyond the fact that the African Union’s follow-up capabilities are limited, the issue of ‘creeping coups’ clearly represents a procedural predicament for the AU as it allows coup perpetrators to technically satisfy the demands of the AU whilst actively pursuing a self-legitimation process. The cases of Mauritania and Guinea illustrate the fact that the current AU policy instruments surrounding UCG (despite good premises and credible application) still lack the necessary content to comprehensively respond to military coups, particularly in instances where attempts are made at auto-legitimation. The aforementioned limits on the legal capability of the AU in addressing ‘creeping coups’; suggests that the ratification of the Addis Charter is a much needed step in the process of effectively responding to auto-legitimation. However, whilst the ratification of the Addis Charter may bolster the African Union’s existing rights of recourse in dealing with UCG, it is likely that the insufficient follow-up capabilities and lack of ‘real’ power on the part of the AU will continue to limit the ability of the organisation to respond in such a way that the principles of constitutionality are effectively protected.

¹⁰⁰ ‘Unconstitutional Power Grabs Threaten African Democracy’ (author unknown) at <http://www1.voanews.com/english/news/a-13-2009-09-14-voa58-68709027.html> (accessed 14 November 2009)

¹⁰⁰ Souare, I ‘The AU and the Challenge of Unconstitutional Changes of Government in Africa’ ISS Paper 197, Institute for Security Studies, August 2009

¹⁰¹ Kameldy, N. ‘An Analysis of the Military Coup in Mauritania and its Implications for Democratic Governance’, Open Society Institute, AFRI Map, October 2008.

ECOWAS has previously used military intervention as a means of bringing about stability in Liberia, Sierra Leone and Guinea-Bissau. See Adebajo, A. ‘Building Peace in West Africa: Liberia, Sierra-Leone and Guinea-Bissau’

¹⁰² Ikome, F.N ‘Good Coups and bad Coups: The Limits of the African Union’s Injunction on Unconstitutional Changes of Power in Africa’, Institute for Global Dialogue, Midrand, 2007 pg 44

The power of prevention

Does this render the AU an ineffectual organisation in the context of Africa's positive political development? Does the fact that its *response* mechanism lacks the impetus of 'real' power suggest that it has no hope of effecting any change in the incidence of UCG? This report suggests not. An analysis of the AU response to UCG has illustrated how the AU has successfully responded to illegal transfers of power in the sense that it has used its various policy mechanisms to their full extent and applied them in a timely fashion. The organisation has been unsuccessful, however, in precipitating outcomes that are consistent with the end goal of these policy instruments. This paper will now look to illustrate how, the limitations of the current AU response mechanisms can be remedied by addressing the *prevention* aspect of UCG.

The African Union's policy mechanisms related to UCG focus on 'post-the-fact-reactions',¹⁰³ and only offer a policy framework based on reaction. By establishing a system of prevention, the AU should effectively be able to bypass the challenges posed by post-coup situations and the intricacies of restabilising constitutionality once it has been spoiled. In the case of UCG, however, *prevention* cannot simply be based on the establishment of a credible trigger mechanism that could be used to signal potentially volatile domestic situations and induce a pre-emptive response. The clandestine nature of military coups allow for illegal political takeovers to come about with little forewarning and take the ruling government by surprise.

A preventative policy, in the true sense of the term would demand the AU directly reach out to those potential coup perpetrators and dissuade them from pursuing their unconstitutional political takeover- an impossible task for obvious reasons. Thus, in the pursuit of a viable prevention mechanism, this paper suggests that the AU be tasked with creating and protecting a new set of steadfast political norms that bind member states to a broad collection of democratic and constitutional ideals. If these ideals can become entrenched within the domestic political landscape of individual member states, then it is feasible that the African Union would no longer have to intervene in instances of constitutional and democratic malpractice. Contemporary norm creation thus stands a feasible means of the AU achieving its goal of eliminating UCG from the continent as well as achieving its long-term mandate.

¹⁰³ Ikome, F.N op cit. pg 34

Setting the standard

Preventing future illegal transfers of power from taking place is largely concurrent with the development of strong normative ideals that render UCG an unacceptable mode of power transition. Much as the international political arena has experienced a wide-spread wave of democratisation since the end of the Cold War and Africa has certainly made positive strides towards a greater acceptance and adherence to democracy and good governance.¹⁰⁴ An analysis of UCG trends throughout Africa's history shows that, since the inception of the Lomé Declaration, there has been a marked decrease in the continental per decade rate of UCG (9/decade). This continental-wide decrease is best put in perspective when one considers that West Africa *alone* experienced 13 unconstitutional changes of government between 1963-70, 11 between 1971-80, and 7 between 1981-90.¹⁰⁵ Whilst global trends of democratisation have certainly played their part in reducing the incidence of military coups and other UCG, the African Union should be applauded for its determined pursuit of widespread constitutionality and Africa's political betterment. By engaging with leaders from across the continent and persistently making reference to the importance of democracy within the context of Africa's future development, the AU has served to cultivate a political landscape in which deviations from constitutionality are met with an immediate response.

The issue of unconstitutional changes of government illustrates how, through the adoption of various policy instruments and official legislation, the AU has created a 'web' of normative ideals that has permeated throughout Africa's political atmosphere. The ability of the AU to preside over Africa's political progress places the organisation in a position in which it is able to shrewdly lead its member states down the path toward greater democracy. The theory of political constructivism maintains that ideas, norms, and principles can be fashioned by discourse, communication, and socialisation amongst individual actors.¹⁰⁶ As opposed to the theoretical tenants of realism, which presupposes that the interests of individual actors should be taken as given, constructivism suggests that actors respond to external changes in what is considered the norm. This response leads to an internalisation of generally accepted norms and practices, thus effectively influencing the actions and political nature of individual actors.

¹⁰⁴ Democratic systems in Africa were few and far between in Africa prior to 1990. In 2007 however, Freedom House classified half of the 48 or so Sub-Saharan African states as democracies – that is, regimes under which citizens can choose and replace their leaders in reasonably free and fair elections.

¹⁰⁵ 'Unconstitutional Power Grabs Threaten African Democracy' (author unknown) at <http://www1.voanews.com/english/news/a-13-2009-09-14-voa58-68709027.html> (accessed 19 October 2009)

¹⁰⁶ Reus-Smit, C. (ed.) 'The Politics of International Law' Cambridge University Press, Cambridge, 2004 pg 362

From a political perspective, the theory of constructivism holds that the coming together of states within a defined structure allows for a conglomeration of ideas to merge into defined normative parameters.

The AU serves as a political entity which can facilitate this coming together of individual actors and allow for normative and ideational tenets to be developed. As has been illustrated, the African Union's lack of 'stick and carrot' limits its ability to forcefully impose its determined parameters of good political practice, yet this does not mean that the organisation does not wield another form of power. This power is derived from the legitimacy of the rational-legal authority they embody and the control over information and resources.¹⁰⁷ As has been observed within other international organisations, the 'machinery' of an organisation maintains a degree of power as often 'the machinery's norms and rules constrain what states do, but the machinery itself is passive'.¹⁰⁸ The power of the AU to generate norms provides the organisation with an influential tool with which to implement its continental 'game plan'.

However, it is evident that these AU commitments to greater constitutionality and democracy have not translated into an immutable adherence on the part of all AU members. Observers are quick to point out that, despite the development of groundbreaking policy instruments aimed at addressing UCG and promoting the notion of continental-wide adherence to constitutionality, Africa has witnessed a number of military coups or other illegal transitions of power since the Lomé Declaration was adopted in July of 2000.¹⁰⁹

¹⁰⁷ Barnett, MN. And Finnemore, M. 'The Politics, Power and Pathologies of International Organizations' in International Organization, 53, Autumn 1999, pg 704

¹⁰⁸ Ibid. pg 707

¹⁰⁹ Loc. Cit

Table 3.1

Cases of Unconstitutional Changes of Government in Africa since 2000¹¹⁰

Country	Date
Mauritius	January 2002
Central African Republic	15 March 2003
Sao Tome and Principe	17 July 2003
Guinea-Bissau	14 September 2003
Togo	5 February 2005
Mauritania	3 August 2005
Mauritania	6 August 2008
Guinea	23 December 2008
Mauritius	17 March 2009

This figure is heavily influenced by the fact that, whilst Africa has witnessed an overall development in the levels of democracy and rule of law within individual states, illegal usurpations of power (the most common being military coup d'états, as commented on in chapter 1) are orchestrated by a handful of individuals acting in their own personal capacity. Mauritania, for example, was beginning to show signs that a healthy democracy was beginning to take root before General Mohamed Ould Abdel Aziz initiated his own illegal political takeover. How then should the AU hope to shape Africa's political future through the development of positive normative ideals when groups of disgruntled individuals maintain the ability to override democracy? The answer to this question lies in the ability of the AU to more compressively address the governance practices of incumbent regimes.

Legitimacy vs. Legality

Protecting the ideal of constitutional political takeover will require the AU to continue with its outright condemnation of UCG and the continual development of progressive policy mechanisms (despite the sighted shortfalls in follow-up capacity). This can only help to

¹¹⁰ Souare, I 'The AU and the Challenge of Unconstitutional Changes of Government in Africa' op cit.

These cases are not limited to only military coups but also include any instance of political transition that has been deemed 'unconstitutional' as per the African Union's definitional parameters of the term 'unconstitutional change of government.'

entrench the notion that legitimate and constitutional political transitions are the only acceptable means through which a government should come to power – thus diffusing this normative and ideational doctrine throughout Africa’s political and social landscape. However, there is more to the African Union’s task than continually speaking to the issue of UCG. The AU must endeavour to more adequately address the pressing issue of constitutional ‘tinkering’ on the part of incumbent governments, many of whom were elected via constitutional processes. African political development has suffered due to the inadequacy and ineffectiveness of its governance institutions, as well as the lack of respect for these institutions by both the governors and the governed on the continent.¹¹¹ Whilst the AU should be credited for playing a prominent role in the recent progression of democratisation on the continent, it is clear that in order to effectively establish a culture of constitutional sanctification in Africa, the organisation will have to tackle the principle sources of political instability that lend to the incidence of UCG.

Critics have been more than happy to point out how the AU is willing to condemn unconstitutional political takeovers and brand coup perpetrators as enemies of democracy, when a perturbing number of AU member states are lead by governments and heads of state that hardly uphold the ideals of democracy themselves. Thus, the issue of UCG should be approached from two sides: one being the conduct of the incumbent government and its respect for democracy and constitutionality and the other being the position of those wanting to oust the government and come into power. It has been argued that a policy mechanism such as the Lomé Declaration overemphasises the notion of ‘legality’ over the more essential ideal of ‘legitimacy’.¹¹² ‘Most of the heads of state have been in power for 20 to 30 years. And so when they go for AU heads of states meetings it is really difficult for them to condemn say [Robert] Mugabe or Gadhafi or [the late Lansana] Conte at the time when he was still alive, because they are very senior citizens who are supposed to be wise.’¹¹³

The issue of presidential term-limits should be highlighted as one of the primary areas of focus within a compressive AU preventative policy aimed at reducing the possibility of coup

¹¹¹ Ikome, F.N op cit pg 34

¹¹² ‘The Challenges of Unlawful Changes of Regime’ (author unknown) at://www.pambazuka.org/aumonitor/comments/2295/ (accessed 22 November 2009)

¹¹³ ‘Unconstitutional Power Grabs Threaten African Democracy’ (author unknown) at <http://www1.voanews.com/english/news/a-13-2009-09-14-voa58-68709027.html> (accessed 23 November 2009)

d'états taking place. The Addis Charter makes the first concrete mention of instituting an agreed upon framework concerning presidential term-limits and any attempt at altering constitutional parameters in favour of the incumbent regime, '[t]he ultimate aim would be to adopt a binding continent-wide policy on two-term limits of a maximum of seven years for presidential mandates for a minimum period of three decades or thereabout and to categorically refuse any change to this policy.'¹¹⁴ Evidence suggests that the overstay of long-standing African leaders is often accompanied by incompetent governance which a) fuels political instability in that country b) serves as a constant pretext or justification for military coups and c) stands in the way of establishing a culture of smooth and regular changes of government in Africa.¹¹⁵

The Addis Charter may canvass a broad spectrum of issues concerning democracy and constitutionality (with a particular focus on UCG) yet, once again, much of its prescriptive content is deemed practically unviable. '[T]he Charter fails to devote more than a passing reference to the undemocratic constitutions that provide the legal basis of many illegitimate regimes in Africa. Because of this, the Charter effectively evades the issue in that it attempts to prevent unconstitutional changes of government without addressing the fundamental problem, since many unconstitutional regime changes (coups) in Africa have clearly stemmed from political stalemates that in turn often stem from the lack of alternation between political parties, which itself is caused by constitutions that, in these situations, are tailor-made to perpetuate the regimes in power.'¹¹⁶

Undemocratic rule further impedes legitimate political transition in instances where incumbents amend existing constitutional provisions, alter party procedures and rules and engage in blatant gerrymandering in order to extend their own terms in power or anoint a successor of their own choosing – all of which exclude the wider citizenry from legitimately participating in the succession process.¹¹⁷

¹¹⁴ Souare, I 'The AU and the Challenge of Unconstitutional Changes of Government in Africa' op cit.

¹¹⁵ Ibid.

¹¹⁶ Kameldy, N. op cit.

¹¹⁷ Banjo, A. 'Constitutional and Succession Crisis in West Africa: The case of Togo' in African Journal of Legal Studies, 2008, pg 149

Table 3.2

African Heads of State that have left power 'after losing elections' since independence.¹¹⁸

No.	Leader	Country	Came to power	Departed
1	Aristide Pereira	Cape Verde	July 1975	Feb. 1991
2	Mathieu Kérékou	Benin	Oct. 1972	March 1991
3	Kenneth Kaunda	Zambia	Oct. 1964	Nov. 1991
4	Denis Sassou N'Gueso	Rep. of Congo	Feb. 1979	Aug. 1992
5	Didier Ratsiraka	Madagascar	June 1975	March 1993
6	Hastings Banda	Malawi	July 1964	March 1994
7	Nicéphore Soglo	Benin	March 1991	March 1996
8	Abdou Diouf	Senegal	Jan. 1981	March 2000

Removing motivation

The AU cannot hope to effectively address the issue of UCG if it is not willing to condemn the equally unconstitutional actions of incumbent African governments and begin to remove any possible means of justification from potential coup-plotters. Indeed, one of the more common justifications used by successful coup instigators is the fact that the previous regime did either not allow for any democratic avenues through which constitutional transition could take place or so blatantly abused its power in office that institutions such as the military could snatch power without any outright civilian opposition. Delphine Lecoutre of the Institute of Peace and Security Studies at Addis Ababa University illustrates the correlation between bad governance on the part of an incumbent regime and the reaction by those being governed in an atmosphere of democratic suppression, in stating that 'if they cannot be a political opposition party or have access to elections by themselves, they will access it by military means.'¹¹⁹

Thus, the AU retains the ability of 'normative influence' and should look to build on its earlier endeavours to promote greater levels of democracy and constitutionality across the

¹¹⁸ Souare, I 'The AU and the Challenge of Unconstitutional Changes of Government in Africa' op cit.

¹¹⁹ 'Unconstitutional Power Grabs Threaten African Democracy' (author unknown) at <http://www1.voanews.com/english/news/a-13-2009-09-14-voa58-68709027.html> (accessed 23 November 2009)

continent. In doing so, the act of UCG could quite possibly become unthinkable in a political atmosphere in which only legal transitions of power are deemed acceptable. However, in order for this norm creation to have any meaningful effect, the organisation must look to address the inadequacies its condemnation of illegal usurpations of power when compared with its acceptance of bad governance on the part of incumbent regimes. In making explicit reference of this, the AU can hope to create an equally strong normative framework that does not permit unconstitutional and unacceptably prolonged periods of governance. This would serve to not only inadvertently reach out to those potential coup-plotters by removing one of the primary justifications for executing a military coup d'état but also strengthen the normative and ideational concerns for smooth and frequent transitions of political power in Africa.

CHAPTER 4

A NEW BEGINNING

“A leader is someone who steps back from the entire system and tries to build a more collaborative, more innovative system that will work over the long term.”¹²⁰

¹²⁰ Quote by Robert Reich, twenty-second United States Secretary of Labour Under Bill Clinton (1993-1997)

An analysis of the African Union response to the recent military coups within West Africa reveals how the organisation intends to deal with such deliberate unconstitutional changes of political power on the continent. Moreover, it illustrates how extensive the broader challenges of sustainable democracy and constitutionality are within the continent of Africa. It would be both premature and short-sighted to conclude (in light of the fact that unconstitutional political takeovers have continued to occur during the short time that the AU has been in existence) that the AU has failed in its attempt to curb the incidence of UCG on the continent or that its hopes of creating a culture of democracy and good governance are wishful at best and unattainable at worst.

When reflecting on the African Union's first decade of existence, the organisation should be credited with creating an extensive policy framework with which to address the ongoing political scourge that is UCG. Perhaps more importantly, the AU has made use of this policy framework in the face of recent military coups and has by no means taken these constitutional transgressions lightly. However, in the cases of Mauritania and Guinea, the thorough application of UCG-related policies has not rendered the desired outcome – a return to legitimate constitutional order. Thus, whilst the per decade rate of unconstitutional changes of power has dropped substantially under the tenure of the AU, the ability of the organisation to consistently precipitate its desired outcome still hinges in many ways on the 'real' power that it commands as a continental organisation. What changes then need to be implemented in order for the AU to become more effective in limiting both the occurrence of UCG and instances of illegal constitutional amendments on the part of incumbent governments?

This report, in its conclusion, will illustrate that the reforming or complete overhaul of current policies relating to UCG and undemocratic practices is a short-term strategy that satisfies misguided demands for instant and comprehensive outcomes in instances of illegal political practice. Rather, an appreciation of the long-term benefits of positive norm creation and constructivist-style institutionalisation illustrates how vitally important it is for the AU to persistently draw attention to illegal political acts on the continent; implement the relevant policy mechanism, and emphasise then reemphasise the relevance and importance of the political ambitions the continent has set for itself. Without suggesting that the current AU policy instruments remain stagnant and cease to seek improvement, this report looks to emphasise the fact that unrealistic expectations levelled at the AU place the organisation in a negative light as an ineffective political entity that does not maintain the capacity to enforce

‘genuine’ change. It is only once we appreciate the subtle power the AU maintains in bringing about sustainable changes to the continent in the long run, that we can appreciate the importance of the organisation (along with its ‘flimsy’ policy framework) in bringing about an improved future for African politics.

Africa’s post-colonial ‘teething’ period painted a bleak picture of a continent that was plagued by a repetitive tide of civil strife, economic collapse, authoritarian rule and illegal power grabs. In the midst of this developmental downturn, the respect and advancement of constitutionality and democracy was stifled as African political structures became increasingly unstable. Neither military nor civilian governments could seem to initiate a tangible turnaround in Africa’s political trajectory and in many cases; these governments simply compounded already existing political frailties. Both types of government proved to be equally capable of suppressing domestic democratic freedoms and overlooking any facets of constitutionality that may challenge their stranglehold over power, creating a dangerous culture of oppressive political rule that undercut the potential for contemporary statehood to become entrenched. From the time of Africa’s political independence until today, military coups have stood out as particularly damaging political acts that are most often perpetrated by a small group of military personal and characterised by a complete dismissal of democratic processes.

Not only do military coups continue to upset the practice of political succession on the continent, they precede the coming into power of military governments that, despite often presenting themselves as a disciplined and capable entity, have little or no experience in matters of state governance. The ability of military coups to so swiftly and unexpectedly overrule an existing government makes them particularly threatening to any ambitions of creating a culture of consistent and fluid transitions from one democratically elected government to the next. Indeed, both incumbent governments and ambitious coup perpetrators have shown contempt for the core principles of constitutionality, whether this has been in the form of overriding or completely ignoring constitutional law whilst in power or bypassing the constitutionally defined avenues of gaining political power. This does not make for a fertile environment in which constitutionality and political legitimacy can be nurtured and has been a root cause of why Africa’s political history has been tainted.

The plight of West Africa has been emphasised due to its reputation as a traditional hotbed for UCG and totalitarian political rule, standing out as a sub-region that only comprises one third of the continent's states, yet has accounted for more than half of all illegal political takeovers since African independence. Yet, West African has in recent years begun to show signs of positive political institutionalisation and has seemingly begun to turn its back on authoritarian regimes and demand a greater degree of democratic governance throughout the region. The transformation that occurred on the West African topography from the early 1990's was broadly accepted as a symbol of a new era of political development in the sub-region.¹²¹ Unfortunately, military coups are exactly the kind of political act that is able to so swiftly reconfigure the political dynamics of not only an individual state, but an entire sub-region. The long and arduous process of democratic consolidation and constitutional resoluteness can so easily be stalled (and often reversed) by the illegal actions of a few. The successive military coups in Mauritania and Guinea have once again placed West Africa at the centre of contemporary discourse surrounding UCG and have given credence to the notion that Africa will perhaps never comprehensively rid itself of unconstitutional changes of government.

The history of military coups on the continent highlights how detrimental this form of unconstitutional change of government has been in relation to the fostering of constitutionality as an immovable political ideal that should be the preeminent principle by which African governance and political transitions are guided by. This cannot be achieved in the midst of continual political usurpations and illegitimate governance, nor can it be achieved without the presence and influence of a proficient continental body that is able to guide individual members towards a collective goal. The Organisation of African Unity failed to fulfil this role. A manifestation of Pan-African ideals, the OAU proved to be an impotent organisation that did not maintain the capacity to assert itself upon its member states. Moreover, the organisation was unable to establish a concrete policy framework with which to systematically deal with issues of UCG and undemocratic governance. Hence, the OAU was to preside over a period of African political history that, due to the plethora of illegal putsches and almost nonexistence of political accountability, has contemporary reverberations for current day continental governance. Many of the OAU's failures can be attributed to the international political climate in which it was immersed for the majority of

¹²¹ Banjo, A. 'Constitutional and Succession Crisis in West Africa: The Case of Togo' in *African Journal of Legal Studies*, 2008, pg 149

its existence. Sovereignty enjoyed a privileged position within international perceptions of jurisprudence, remaining the centrepiece of Western constitutional theory.¹²² Absolute sovereignty and broad policies of non-intervention governed international, continental and regional interactions, placing considerable emphasis on the individual rights of the state and its ability to conduct its own affairs free from intercession. Without the guidance and intervention of a capable continental organisation, the dire domestic political affairs of many African states were left to fester.

The African Union was to be born out of the need for a new and revitalised continental organisation that would be both willing and able to tackle Africa's political transition and governance challenges. The AU was to immediately build upon many of the policy outlines that the OAU had begun to establish towards the end of its tenure, ensuring that the organisation's Constitutive Act laid a strong foundation upon which effective continental governance could be build. The AU immediately hinted at fundamental policy reformations, most importantly departing from the long-standing tradition of non-intervention and the observance of absolute sovereignty. The Lomé Declaration tackled UCG head-on, establishing a standard 6 month post-coup period in which constitutional order would have to be restored. After the expiry of this period, the Declaration stipulates that targeted sanctions and imposed trade restrictions will be imposed on the illegitimate government as well as excluding the offending government from all AU activities.

By placing considerable emphasis on the return to constitutional order and constitutionality, the Lomé Declaration lends insight into the African Union's overall goals for the continent. It also serves to emphasis the importance the AU has placed on the acquisition of political power, recognising UCG as a fundamental challenge within the organisation's wider goals for democracy and good governance. The (yet to be ratified) African Charter on Democracy, Elections and Governance (Addis Charter) stands as the most definitive policy document concerning UCG and extends aspects of both the AU Constitutive Act and the Lomé Declaration. It too categorically denounces any form of unconstitutional takeover, citing UCG as a primary source of instability and insecurity on the continent.

¹²² Ward, I. 'The End of Sovereignty and the New Humanism', Stanford Law Review, Vol. 55, 2003 pg 116

This report has assessed the role of the AU *vis-à-vis* the military coups in Mauritania and Guinea upon the basis of both the organisation's *application* of current policy mechanisms, as well as the *follow-up measures* adopted post-application. These enquiries fall into a broader investigation regarding how the AU *responds* to UCG.

The AU has not faltered with regards to actively applying the relevant policy tools it has at its disposal; and in the face of recent illegal political takeovers in West Africa, the organisation wasted little time in publically condemning the actions of both General Mohamed Ould Abdel Aziz and Captain Moussa Dadis Camara. Importantly, the AU followed predetermined policy procedures in immediately calling for returns to constitutional order in both states, abetted by open communication between the offending governments and AU officials. Furthermore, the AU has indeed imposed sanctions on both Mauritania and Guinea at various times since the coups were staged in August and December 2008 respectively. These sanctions have been imposed in varying degrees in response to the non-compliance of both illegitimate governments, representing a tangible departure from the OAU-inspired approach of non-interference. This should be welcomed as an indubitable commitment to actively applying policy rather than simply condemning such acts on paper and within public forum.

However, as has been illustrated, the comprehensive application of predefined policy tools is only one aspect of the response query. Neither Mauritanian nor Guinea can be seen as examples of a successful AU response because the policy instruments used in condemning the political acts in those countries come with defined outcomes that the policies are intended to precipitate. Neither Mauritania nor Guinea have welcomed a bona fide return to constitutional order. The dissimilarity between enthusiastic application on one hand and inducing the desired effect on the other is a chief reason why the AU has attracted criticism relating to its effectiveness as a legitimate continental organisation.

The issue of 'creeping coups' has also been presented as a further challenge to the AU and its efforts to enforce prescribed political conditions in post-coup environments. Whilst the return to constitutional order should remain the organisation's fundamental goal in dealing with coup-induced governments, the pursuit of auto-legitimation on the part of illegal governments presents the AU with a predicament that at present, cannot be remedied with any concrete (or ratified) policy framework. Calls by the AU to reinstitute constitutionality

can be essentially sidestepped by illegitimate governments through a process of converting an illegal coup into a quasi-constitutional state of affairs in which the coup perpetrators ascend to a position of ‘lawful’ political power. If the AU demands a return to constitutional order and the perpetrators of the coup are able to steer the country towards eventual presidential elections, one could suggest that the organisation’s requirements been met. However, it has been made clear that the AU cannot afford to accept these attempts at self-legitimation as a result of the circumstances under which they occur. An election intended to restore constitutionality cannot be deemed acceptable when the political climate in which the elections are held cannot itself be deemed constitutional. The outcome of the presidential elections in Mauritania, whilst being extensively challenged on the grounds of legitimacy and fairness, have rendered Mohamed Ould Abdel Aziz the president of the country, whilst Captain Moussa Dadis Camara and his military junta continue to evade a commitment to staging elections in that country.

Whilst the Addis Charter sets out procedural directives and specific policies designed to tackle this new generation of coup, the fact that the Charter has yet to be ratified limits the African Union’s avenues of recourse and has left the organisation without an official position upon which to reference. Deficits in the depth of African Union policy relating to ‘creeping coups’ and ‘coup conversion’ compounds what some observers have deemed an overall incapacity on the part of the organisation to effectively respond to UCG. The AU cannot hope to address UCG without concurrently attending to the political actions of incumbent governments – many of whom have been legitimately elected into power- that divert from democratic practice and subvert constitutional law.

There are two obvious reasons for this. Firstly, the edicts of an organisation attempting to promote democracy and good governance will always lack credibility when active members of the organisation fail to uphold these ideals in their own capacity. The fact that certain African Heads of State are welcomed (and in some instances celebrated) into the AU without question, despite presiding over blatant undemocratic governments, weakens the organisation’s legitimacy.¹²³ Secondly, the oppressive rule of incumbent governments has

¹²³ The fact that Libyan leader Muammar Gaddafi reigned as Chairperson of the AU in 2009 raises questions as to the legitimacy of the AU when one considers the Chairman himself came into power via a military coup in 1969. Gaddafi was also a prominent figure in the initial establishment of the AU despite his own well-documented limitations on ideals of pluralistic democracy and political freedom. Denis Sassou Nguesso, the President of the Republic of Congo, has also previously presided over the Chairmanship of the AU (2006)

been sighted as one of the key stimulus behind military coups in Africa and is often used as motivation by coup perpetrators as to why their political usurpation should be welcomed as a necessary act in the face of inept political rule. Ardently addressing the issue of how governments come into power without simultaneously addressing the issue of how that power is exercised once in office is akin to painting the outside of a house whilst the interior remains a shambles.

This report has sought to demonstrate that the respect for constitutionality remains a pivotal aspect of African political advancement, the achievement of which is impossible without first addressing one of constitutionality's greatest repressors – unconstitutional changes of government. Questions have been raised as to whether or not the AU maintains the capacity to instil a continent-wide adherence to democracy and constitutionality on the part of governments in office, and more specifically, an engrained respect for the legal transition of political power. The question of 'real' power is often sighted as a reason for the AU ultimately being unable to achieve its defined goals with relation to UCG and undemocratic governance. Realists would be quick to point out that the ability of an organisation to enforce any type of reform is largely dependent on the actions, interests and desires of the individual units that make up the organisation.¹²⁴ At present, the AU does not possess the capacity to strongly deter either incumbent governments from wondering outside the bounds of constitutional rule or potential coup perpetrators from bypassing the legal processes of political transitions – the consequences for these actions are simply not robust enough. This realist logic leaves one enquiring as to whether or not it is viable for an organisation such as the AU to pursue its predefined mandate for the continent without possessing the necessary 'stick' with which to steer its individual members. Instead, this report has outlined the potential for the AU to potentially circumvent this 'real' power quandary by making use of its norm-creating power as a rational-legal authority.

This report has made reference to the norm-creating abilities of the AU and seeks to show in conclusion that the abandoning or continual reformation of policy instruments – in light of the fact that these instruments have not completely eradicated the aforementioned challenges to democracy and constitutionality – is a counterproductive means of addressing a long-term

despite the fact that his second spell as president, commencing in 1997 (the first being from 1979 to 1992) came on the back of a political putsch. Further see www.african-union.org

¹²⁴ Blanke, H. 'Theories of International Organizations: The Realist, Institutional and Idealist School' International Organizations, Working Paper 2, Winter 2008/09 pg 3

issue of political institutionalisation and normative political practice. A historical comparative assessment between the modern European state and its average African counterpart reveals that the former has been able to develop over a significantly longer period of time, whilst the latter has been expected to assimilate contemporary elements of Western-centric statehood in the past few decades. Liberal democracy has been part of the evolution of the European state and such things as the separation of powers, the rule of law, representative government, accepted principles of political succession and accountable bureaucracy have developed over time and not simply been instituted at will.¹²⁵ A retrospective view reveals that Africa is now better placed at the outset of its political development than Europe was decades ago, the AU being able to comparatively ‘fast track’ and oversee the continent’s progress towards fully developed statehood, a luxury that Europe lacked for the majority of its early development. Political evolution is inevitable; it is the nature of the evolution which should be of most concern.

In conclusion, the AU must persist with its current policy mechanisms with the understanding that the extent of the African Union’s ‘real’ power effectively limits the ability of the organisation to fully enforce its will in instances of UCG and undemocratic rule. This means that the continual application of current constitutionality-related policies may not produce the immediate and explicit results that they intend to precipitate. Yet this should not deter the AU from persisting with (and continually advancing) their attempts to control the pervasiveness of undemocratic rule and unconstitutional changes of governments on the continent, with particular focus on the military coup d’état, which remains the most prolific and damaging form of UCG. The immediacy of the results, or lack thereof, should not deter the AU from realising its potential as an avenue for creating new ideas, rules and norms for the continent in the future. The Lomé Declaration and the Addis Charter need to be continually referenced in order to repeatedly emphasise the goals that the continent has set for itself and to illustrate that Africa is making a tangible departure from its bleak political past. The importance of the AU in terms of the Africa’s long-term political trajectory cannot be understated. By reflecting the values and norms on which it was founded and influencing the values and norms of participating actors¹²⁶, the AU can seek to passively ‘shepherd’ the continent of Africa

¹²⁵ Mafeje, A. ‘Democratic Governance and Democracy in Africa: Agenda for the Future’ Prepared for presentation at the African Forum for Envisioning Africa held in Nairobi, Kenya, 26 – 29 April 2002 pg 8

¹²⁶ Blanke, H. op cit. pg 3

toward an era in which the still fragile democratic and constitutional values of today become the accepted norms of tomorrow.

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